

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(1) CONSTITUTIONAL AUTHORITY OF ACTS/1201. Powers of Westminster Parliament.

## STATUTES (

### 1. NATURE OF PRIMARY LEGISLATION

#### (1) CONSTITUTIONAL AUTHORITY OF ACTS

##### 1201. Powers of Westminster Parliament.

Subject to the legislative powers of institutions of the European Community<sup>1</sup>, the legislative authority of the Sovereign in the United Kingdom Parliament is supreme<sup>2</sup>. An Act of Parliament, whether public or private<sup>3</sup>, can define or override the common law<sup>4</sup>, abrogate local custom<sup>5</sup>, and amend or repeal the provisions of earlier Acts<sup>6</sup>. Since every Parliament is supreme, one Parliament cannot derogate from the powers of a subsequent Parliament<sup>7</sup>. It follows that an Act can neither provide that it is to be incapable of repeal<sup>8</sup> nor dictate the form of subsequent legislation<sup>9</sup>.

1 See PARA 1203 post.

2 'Of the power and jurisdiction of the Parliament for making of laws..., it is so transcendent and absolute as it cannot be confined either for causes or persons within any bounds': 4 Co Inst 36. 'It is not for the court to say that a Parliamentary enactment, the highest law in the country, is illegal': *Cheney v Conn (Inspector of Taxes)*[1968] 1 All ER 779 at 782, [1968] 1 WLR 242 at 247 per Ungood-Thomas J. Nor can it be argued that an Act is vitiated by fraud or other bad faith on the part of legislators (*Fletcher v Peck* (1810) 6 Cranch 87 (Act alleged to have been procured by bribing members of Parliament)) or promoters (*British Railways Board v Pickin*[1974] AC 765, [1974] 1 All ER 609, HL (promoters of private Act alleged to have misled Parliament by false recital)). See further *Labrador Co v R*[1893] AC 104 at 123, PC; *R v Jordan* [1967] Crim LR 483 (Race Relations Act 1965 (repealed: see now the Race Relations Act 1976) alleged to be a nullity as infringing free speech); *Martin v O' Sullivan (Inspector of Taxes)* (1982) 57 TC 709, [1982] STC 416; affd 57 TC 709, [1984] STC 258n, CA (allegation that members of Parliament voting for Bill were disqualified as holders of offices of profit under the Crown rejected); *Manuel v A-G*[1983] Ch 77, [1982] 3 All ER 822, Sir Robert Megarry V-C and CA; *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Indian Assn of Alberta*[1982] QB 892, [1982] 2 All ER 118, CA (Canada Act 1982); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the territorial jurisdiction of Parliament see PARA 1317 post.

3 In an enactment applying to England and Wales, a reference to an Act of Parliament, without more, is to be construed as a reference to an Act of the United Kingdom Parliament at Westminster: *R v Registrar of Joint Stock Companies, ex p More*[1931] 2 KB 197, CA. All such Acts are of equal force within their scope: see *Earl of Shrewsbury v Scott* (1859) 6 CBNS 1 at 219 per Willes J; on appeal (1860) 6 CBNS 221 at 222a, Ex Ch, per Pollock CB. As to the meaning of 'public' and 'private' in this context see PARA 1208 et seq post.

4 In the seventeenth century it was occasionally suggested that a statute was void if contrary to reason or morality as manifested in the fundamental principles of the common law: see eg *Bonham's Case* (1610) 8 Co Rep 114a at 118a; *Day v Savadge* (1614) Hob 85 at 97; *City of London v Wood* (1701) 12 Mod Rep 669 at 687. The principle was abandoned in the following century (1 Bl Com (14th Edn) 91) but, in construing statutes, the courts still presume that Parliament does not intend to interfere with the well-established principles of the common law: see PARA 1438 et seq post. Similarly, an Act cannot be declared void by the courts on the ground that it contravenes the established principles of public international law (see eg *Cheney v Conn (Inspector of Taxes)*[1968] 1 All ER 779, [1968] 1 WLR 242), but it will be construed in the light of the presumption that Parliament intends to observe those principles (see PARA 1439 post).

5 As to the abrogation of custom by statute see CUSTOM AND USAGE vol 12(1) (Reissue) PARA 646.

6 As to amendment see PARA 1289 et seq post; and as to repeal see PARA 1296 et seq post.

7 4 Co Inst 43; 1 BI Com (14th Edn) 90. See *Macarthy's Ltd v Smith* [1979] ICR 785 at 789, [1979] 3 All ER 325 at 329, CA, per Lord Denning MR, and at 796 and 334 per Lawton LJ, where it was said that Parliament's recognition of European Community law in the European Communities Act 1972 s 2(1), (4) can be withdrawn in a later Act. However, the courts have taken the view that in certain cases, such as where independence has been granted to an overseas territory, legal theory must give way to practical politics: see *Blackburn v A-G* [1971] 2 All ER 1380 at 1382, [1971] 1 WLR 1037 at 1040, CA, per Lord Denning MR. Cf *Madzimbamuto v Lardner-Burke and George* [1969] 1 AC 645, [1968] 3 All ER 561, PC, where it was held that the convention that Parliament did not legislate without the consent of the government of what was then Southern Rhodesia had no legal effect in limiting the powers of Parliament. See further *Manuel v A-G* [1983] Ch 77, [1982] 3 All ER 822, Sir Robert Megarry V-C and CA; and *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Indian Assn of Alberta* [1982] QB 892, [1982] 2 All ER 118, CA (Canada Act 1982).

8 *Godden v Hales* (1686) 11 State Tr 1165 at 1167 per Herbert CJ; *Boden v Smith* (1849) 18 LJCP 121 at 124 per Maule J; *Duke of Argyll v IRC* (1913) 109 LT 893 at 895 per Scrutton J.

9 Thus an Act will not be construed as permitting the rules laid down by it to be expressly, but not impliedly, repealed: see *Vauxhall Estates Ltd v Liverpool Corp* [1932] 1 KB 733; *Ellen Street Estates Ltd v Minister of Health* [1934] 1 KB 590 at 595, CA, per Scrutton LJ and at 597 per Maugham LJ. For a provision overriding later enactments unless expressly excluded see the Magistrates' Courts Act 1980 s 31(2) (amended by the Criminal Justice Act 1982 s 77, Sch 14 para 48).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(1) CONSTITUTIONAL AUTHORITY OF ACTS/1202. Formal validity of Acts of Parliament.

## **1202. Formal validity of Acts of Parliament.**

The legislative supremacy of the United Kingdom Parliament implies not only the inability of the courts to question its power, subject to the legislative powers of institutions of the European Community<sup>1</sup>, to enact any particular statutory provision, but also their duty to give effect as Acts of Parliament only to enactments answering that description<sup>2</sup>. It follows that the courts can become concerned with the question whether a particular instrument which they are invited to apply has received the consents necessary to constitute it an Act of Parliament<sup>3</sup>. The courts ought not, for example, to give effect as an Act to an instrument appearing on its face to have been agreed by the Lords and Commons alone<sup>4</sup>. In Acts passed since the latter part of the fifteenth century, the giving of the necessary consents is, however, recited in the enacting formula<sup>5</sup>, and the question of sufficiency of consent has arisen only in relation to earlier instruments containing no such recital<sup>6</sup>, and must in practice be taken to be confined to such instruments. In other words, it is thought that the courts would not of their own motion go behind the enacting formula<sup>7</sup>.

While the question of sufficiency of consent may be open to the courts, that of regularity of consent is not. If a Bill has been agreed to by both Houses of Parliament, and has received the royal assent, it cannot be impeached in the courts on the ground that its introduction, or passage through Parliament, was attended by any irregularity<sup>8</sup>, or even on the ground that it was procured by fraud<sup>9</sup>.

1 See PARA 1203 post.

2 As to subordinate legislation see PARA 1499 et seq post.

3 I.e. the consent of the Sovereign, the Lords and the Commons, or, in certain circumstances, of the Sovereign and the Commons alone: see PARAS 1245-1246 post.

4 *Colledge of Physicians v Cooper (or Hubert)* (1675) 3 Keb 587 per Hale CJ.

5 As to the form of the enacting formula see PARA 1273 post.

6 See eg *Wiltes' Peerage Claim* (1869) LR 4 HL 126. See also *The Prince's Case* (1606) 8 Co Rep 1a at 20b, where the factors resulting in the reception of such instruments, eg the inclusion in them of the words 'by the authority of Parliament', are examined.

7 In 1 Clifford's History of Private Bill Legislation (1885 Edn) 315, details are given of two cases in the nineteenth century in which the royal assent was given by mistake to Bills which had not completed all their stages. In both cases, the position was regularised by a subsequent statute. See also Erskine May's Parliamentary Practice (21st Edn, 1989) 536-537.

8 *Edinburgh and Dalkeith Rly Co v Wauchope* (1842) 8 Cl & Fin 710 at 735, HL, per Lord Campbell; *Earl of Shrewsbury v Scott* (1859) 6 CBNS 1 at 160 per Cockburn CJ; *Martin v O' Sullivan (Inspector of Taxes)* (1982) 57 TC 709, [1982] STC 416 (affd 57 TC 709, [1984] STC 258n, CA). See also *Manuel v A-G* [1983] Ch 77, [1982] 3 All ER 822, Sir Robert Megarry V-C and CA. Cf the position of a legislature deriving its powers from a written constitution and thus having to comply with procedural requirements imposed on it: *Bribery Comr v Ranasinghe* [1965] AC 172, [1964] 2 All ER 785, PC.

9 *British Railways Board v Pickin* [1974] AC 765 at 793, [1974] 1 All ER 609 at 622, HL, where this statement was cited with approval by Lord Wilberforce. This applies whether the Bill was a public or private Bill: see *British Railways Board v Pickin* supra. The following authorities were considered: *Stead v Carey* (1845) 1 CB 496 at 522 per Tindal CJ; *Waterford, Wexford, Wicklow and Dublin Rly Co v Logan* (1850) 14 QB 672 at 680 per Patteson J; *Lee v Bude and Torrington Junction Rly Co* (1871) LR 6 CP 576 at 582 per Willes J; *Labrador Co v R* [1893] AC 104 at 123, PC; *Hoani Te Heuheu Tukino v Aotea District Maori Land Board* [1941] AC 308 at 322, [1941] 2 All ER 93 at 97, PC.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(1) CONSTITUTIONAL AUTHORITY OF ACTS/1203. Legislative powers of European Community.

### **1203. Legislative powers of European Community.**

The power of the United Kingdom Parliament to legislate is not theoretically curtailed by the legislative powers of institutions of the European Community, but when Community law and English law are inconsistent, Community law will prevail. The effect of Community law is discussed in detail elsewhere in this work<sup>1</sup>.

1 See EUROPEAN COMMUNITIES vol 51 paras 3.01-3.06, 3.23-3.34.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(i) Overall Classification of United Kingdom Legislation/1204. Types of legislation.

## **(2) DEFINITION AND CLASSIFICATION**

### **(i) Overall Classification of United Kingdom Legislation**

#### **1204. Types of legislation.**

United Kingdom legislation may be divided into Acts of Parliament<sup>1</sup>, instruments made under the royal prerogative<sup>2</sup>, and various types of delegated legislation made by virtue of an Act of Parliament<sup>3</sup>. A provision contained in any of these may be referred to as an 'enactment'<sup>4</sup>.

- 1 See PARA 1206 post.
- 2 See PARA 1499 post. These form one of the two types of subordinate legislation: see PARA 1500 post.
- 3 See PARA 1500 post. These form the second of the two types of subordinate legislation.
- 4 See PARA 1232 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(i) Overall Classification of United Kingdom Legislation/1205. Meaning of 'statute'.

### **1205. Meaning of 'statute'.**

In modern usage, the term 'statute' is regarded as equivalent to 'Act of Parliament'<sup>1</sup>. It may however be used in a wider sense as embracing all forms of legislation, whether primary (that is in the form of Acts of Parliament) or secondary (that is in the form of delegated legislation or legislation under the Royal prerogative)<sup>2</sup>. Originally the word 'statute' was used to indicate all the Acts passed in one session of Parliament, each particular Act constituting a numbered chapter of the whole statute<sup>3</sup>. A parliamentary Bill is not a statute<sup>4</sup>; nor is a General Synod Measure<sup>5</sup>.

1 'The word 'statute'... may mean what is popularly called an Act of Parliament': *R v Bakewell* (1857) 7 E & B 848 per Lord Campbell CJ at 851. See also Co Litt 126a. For examples of the reception of earlier documents as statutes notwithstanding that the necessary consents (see PARAS 1245-1246 post) were not recited in them see PARA 1202 ante. The loose term 'the statute book' refers to the body of extant statutes in this sense.

2 Cf the term 'statute law', which may mean either the law relating to statutes (in this wider sense) or law expressed in the form of statutes (in that sense). The term 'statutory', as in 'statutory right' or 'statutory duty', is similarly used.

3 1 BI Com (14th Edn) 85c; *R v Bakewell* (1857) 7 E & B 848. Cf para 1271 post.

4 *Willow Wren Canal Carrying Co Ltd v British Transport Commission* [1956] 1 All ER 567, [1956] 1 WLR 213.

5 I.e. a Measure passed by the General Synod of the Church of England: see ECCLESIASTICAL LAW vol 14 para 399 et seq. If, however, such a Measure is laid before Parliament and is then presented to the Sovereign in pursuance of a resolution of each House of Parliament, it has the force and effect of an Act of Parliament on the royal assent being given to it: Church of England Assembly (Powers) Act 1919 s 4; Synodical Government Measure 1969 s 2(2). Measures passed before the enactment of the 1969 Measure were passed by the National Assembly of the Church of England and are known as Church Assembly Measures. Although Measures are not statutes, the term 'enactment' is sometimes used to include them (see further PARA 1232 post) and they are treated similarly to statutes (see PARA 1253 post) so that, eg, the first Measure to which the royal assent was given in 1978 may be cited either as the Dioceses Measure 1978 (see s 25(1)) or as 1978 No 1. Further, the annual volumes of public general Acts contain the text of all Measures which have received the royal assent during the year. The Measures are also included in *Statutes in Force* (in the group 'Church of England') and in an appendix to the Chronological Table of the Statutes (see the Chronological Table of the General Synod and Church Assembly Measures) and are digested in the Index to the Statutes. As to these publications see PARA 1249 et seq post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(ii) Nature and Classification of Acts/1206. Nature of an Act.

## (ii) Nature and Classification of Acts

### 1206. Nature of an Act.

An Act of the United Kingdom Parliament (more briefly referred to as an Act of Parliament, or an Act) is a legislative pronouncement by the Sovereign in Parliament, that is a Bill assented to by the Monarch by and with the advice and consent of both Houses of Parliament<sup>1</sup>. In certain circumstances the 'advice and consent' may be that of the House of Commons alone<sup>2</sup>. The Bill, apart from the change from 'Bill' to 'Act', is in the same form and language as the Act which it becomes<sup>3</sup>.

An Act has a territorial dimension<sup>4</sup>, a personal dimension<sup>5</sup> and a temporal dimension<sup>6</sup>. Its effect is either to declare the law, or to change the law, or to do both<sup>7</sup>. Normally a change in the law is for the future only, but sometimes it has retrospective effect<sup>8</sup>. An Act, since it forms part of the law, falls within a statutory phrase such as 'the principles of English law and the doctrines of equity'<sup>9</sup>. Anything done in reliance on a power conferred by, or other provision contained in, an Act, is said to be done under the Act or pursuant to, or in pursuance of, the Act<sup>10</sup>.

A right conferred by statute is a form of specialty<sup>11</sup>. Copyright subsists in Acts and Bills. In the case of Acts and General Synod Measures, Her Majesty is entitled to copyright which subsists from royal assent until the end of the period of 50 years from the end of the calendar year in which that assent was given<sup>12</sup>. In the case of Bills, copyright belongs to one or both Houses of Parliament and ceases either on royal assent or on the withdrawal or rejection<sup>13</sup> of the Bill or the end of the session<sup>14</sup>. No other copyright, or right in the nature of copyright, subsists in an Act, Measure or Bill<sup>15</sup>.

1 'A law agreed upon by the king or queen of England, having regal authority, the lords spiritual and temporal, and the commons, lawfully assembled; which taketh strength and life by the assent royal': Bac Abr, Statute. As to the necessity at common law for the threefold consent see 4 Co Inst 25; and *The Prince's Case* (1606) 8 Co Rep 1a, 13b. The giving of this consent has been recited in Acts since the latter part of the fifteenth century. For the formula used see PARA 1273 post. As to the power and duty of the courts to inquire into the sufficiency of consents see PARA 1202 ante. In 4 Co Inst 25 it is said that 'the difference between an Act of Parliament and an ordinance in parliament is, for that the ordinance wanteth the threefold consent, and is ordained by one or two of them'. See also Co Litt 159b. The use and effect of royal ordinances in early times is discussed in 2 Stubbs' Constitutional History of England (4th Edn) 615 et seq. The term 'ordinance' was applied also to the enactments of the Lords and Commons during the Protectorate: see eg the title of, and preamble to, 12 Car 2 c 2 (Taxation) (1660) (repealed).

2 The circumstances are specified in the Parliament Act 1911 s 1 (amended by the National Loans Act 1968 s 1(5)); and the Parliament Act 1911 s 2 (amended by the Parliament Act 1949 s 1): see PARA 1246 post. As to the enacting formula in these cases see PARA 1273 post.

3 As to the structure and components of an Act see PARA 1256 et seq post.

4 As to the territorial extent of an Act see PARA 1318 post.

5 As to the persons to whom an Act applies see PARA 1319 post.

6 As to the commencement of an Act see PARA 1279 post; as to the repeal or expiry of an Act see PARAS 1296, 1314 post; and as to transitional provisions see PARA 1294 post. An Act thus has effect as law (1) in the territory to which it extends (its territorial operation); (2) while it is in force in that territory (its temporal operation); and (3) in relation to the persons to whom it applies (its personal operation). It also has an application (or not) in relation to particular things or matters: see PARA 1320 post.

7 4 Co Inst 25; 1 Bl Com (14th Edn) 86; *Dean and Chapter of Ely v Bliss* (1842) 5 Beav 574 at 582 per Lord Langdale MR ('Every Act is made, either for the purpose of making a change in the law, or for the purpose of

better declaring the law...'); *Alexander v Newman* (1846) 2 CB 122 at 136 (section which in one part declared the common law and in another changed it).

8 See PARA 1283 et seq post. The term 'retroactive' is sometimes used instead of 'retrospective': see eg para 1283 note 4 post.

9 *Bashir v Lands Comr*[1960] AC 44, [1960] 1 All ER 117, PC.

10 See eg *R v Robinson*[1993] 2 All ER 1, [1993] 1 WLR 168, CA (certificate of leave to appeal granted pursuant to the Supreme Court Act 1981 s 81(1B) (as added) and the Criminal Appeal Act 1968 s 11(1A) (as added); offence under the Sexual Offences Act 1956).

11 *Cork and Bandron Rly Co v Goode* (1853) 13 CB 826; *Pratt v Cook Son & Co (St Paul's) Ltd*[1940] AC 437, [1940] 1 All ER 410, HL; and see *R v Williams*[1942] AC 541, [1942] 2 All ER 95, PC. Such a right therefore falls within the Limitation Act 1980 s 8, which in general provides for a limitation period of 12 years for specialties: see *Collin v Duke of Westminster*[1985] QB 581, [1985] 1 All ER 463, CA.

12 See the Copyright, Designs and Patents Act 1988 s 164(1), (2). By virtue of a general licence issued by HMSO, photocopying of up to 30% of the original does not require the permission of the copyright owner: see form letter issued by HMSO dated 21 April 1995, addressed to librarians. Certain categories of Crown and parliamentary material may be reproduced in printed form without seeking permission and without charge; but reproduction of certain other material, or in other media, requires permission and the payment of a fee and royalties: see form letter issued by HMSO dated 10 March 1995, addressed to publishers.

13 Copyright in a Bill continues to subsist notwithstanding its rejection in any session of the House of Lords if, by virtue of the Parliament Acts 1911 and 1949, it remains possible for it to be presented for royal assent in that session: Copyright, Designs and Patents Act 1988 s 166(5) proviso.

14 See *ibid* s 166(1)-(5).

15 See *ibid* ss 164(4), 166(7). See also s 167.

## UPDATE

### 1206 Nature of an Act

NOTE 10--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

TEXT AND NOTE 12--Copyright also subsists for 50 years in Measures and Acts of the National Assembly for Wales: 1988 Act s 164(1), (2) (amended by the Government of Wales Act 2006 Sch 10 para 27).

NOTE 12--Letter dated 21 April 1995 superseded: see now letter dated 1 March 1996.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(ii) Nature and Classification of Acts/1207. Methods of classifying Acts.

### 1207. Methods of classifying Acts.

One way of classifying Acts, based on the width of their operation, is into general, local and personal Acts<sup>1</sup>. This classification is used by the Queen's Printer<sup>2</sup>, who however uses as the first category 'public' general Acts<sup>3</sup>. Other methods of classification of Acts are possible<sup>4</sup>. Furthermore there are various ways of classifying 'enactments', using the term to refer to parts only of Acts<sup>5</sup>.

- 1 As to general Acts see PARA 1209 post; as to local Acts see PARA 1213 post; and as to personal Acts see PARA 1214 post.
- 2 As to the printing and publishing of Acts by the Queen's Printer see PARA 1249 post.
- 3 As to public general Acts see PARA 1210 post.
- 4 See PARA 1208 et seq post. Some distinctions formerly used, eg those between enabling (or enlarging) and restraining statutes, obligatory and permissive statutes, declaratory and remedial statutes and affirmative (or positive) and negative statutes, are either obsolete or absorbed in other classifications.
- 5 See PARAS 1232-1240 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(ii) Nature and Classification of Acts/1208. Public Acts.

### **1208. Public Acts.**

An Act is said to be public if it is one of which judicial notice is taken<sup>1</sup>. Every Act passed since 1850 is public in this sense unless it contains an express provision to the contrary<sup>2</sup>. Such a provision has in recent years been included only in personal statutes dealing with private estates<sup>3</sup>.

1 1 Bl Com (14th Edn) 85. The contrast is with private Acts: see PARA 1211 post. As to public general Acts see PARA 1210 post. As to the doctrine of judicial notice see PARA 1352 post. See also CIVIL PROCEDURE vol 11 (2009) PARA 889.

2 Interpretation Act 1978 ss 3, 22(1), Sch 2 para 2. The question whether a statute passed before 1850 is public or private may be less easy to answer. Originally, the rule was stated to be that a statute was public if 'general', private if 'special' or 'particular' (see 1 Bl Com 85; 19 Vin Abr 497, Statutes (C) 8), but it is clear from the authorities (see eg those cited in 19 Vin Abr 496, Statutes (C); Bac Abr, Statute (F); *R v Milton Inhabitants* (1843) 1 Car & Kir 58, note (b)) that in the rule the word 'general' was used to indicate a statute of public concern rather than one of universal application. It did not follow therefore that all local and personal statutes were private: see *R v LCC* [1893] 2 QB 454 at 462-463, CA, per Bowen LJ. The position was complicated by a number of subsidiary rules, eg the rule that a statute could be partly public and partly private (*Ingram v Foot* (1701), as reported in 12 Mod Rep 611 at 613 per Holt CJ); and the rule that a private statute subsequently recognised by a public statute must thenceforth itself be recognised as public (*R v Milton Inhabitants* supra). In the reign of William and Mary, the practice began of inserting in certain local and personal statutes a provision deeming them to be public. As to the effect of such a provision where construing a reference in any other Act to 'any local or private Act' see *Leigh Corpn v British Waterways Board* (1968) 67 LGR 341. By 1850 this practice had so developed that the position was in fact much as it is under the modern law and practice.

3 See eg the Arundel Estate Act 1957 s 8; and the Lucas Estate Act 1963 s 9.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(ii) Nature and Classification of Acts/1209. General Acts.

### **1209. General Acts.**

An Act is said to be general if it applies to the whole community<sup>1</sup>. An Act may be partly general and partly local<sup>2</sup>.

1 *R v LCC* [1893] 2 QB 454 at 462, CA, per Bowen LJ.

2 The Fires Prevention (Metropolis) Act 1774 ss 83, 86 extend throughout England and Wales (*Richards v Easto* (1846) 15 M & W 244 at 251; *Filliter v Phippard* (1847) 11 QB 347 at 354) although all the other sections of the Act (which have now been repealed) extended only to London. See further INSURANCE vol 25 (2003 Reissue) PARAS 637-639; LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 428.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(ii) Nature and Classification of Acts/1210. Public general Acts.

### **1210. Public general Acts.**

The public general Acts comprise all statutes originating in public Bills, except statutes confirming provisional orders. Their chapter numbers are in arabic characters<sup>1</sup>.

1 The contrast is with local Acts (see PARA 1213 post) and personal Acts (see PARA 1214 post). As to chapter numbers see *infra*; and PARA 1271 post. Acts confirming provisional orders were described in the annual volume of local and personal Acts as 'Public Acts of a Local Character' until 1963, when the practice was abandoned. The present classification was adopted in 1948, after a century and a half of change, details of which are given in Ilbert's Legislative Methods and Forms (1901 Edn) 26, 49-50, 64, and in 1 Clifford's History of Private Bill Legislation (1885 Edn) 267-268. The main stages in the development were as follows:

- (1) before 1798, the only distinction which was drawn was that between public and private Acts. All statutes originating in public Bills, and such statutes originating in private Bills as were declared to be public, were public Acts and were numbered in one series (in large roman numerals), at first indiscriminately, but later with those originating in public Bills placed first. Private Acts were not ordered to be printed, and, even if printed privately, were not numbered;
- (2) from 1798 to 1813, in pursuance of joint resolutions of the two Houses of Parliament passed in 1796 (52 Commons Journals 413), statutes were classified as (a) public general Acts; (b) local and personal Acts declared public; and (c) private and personal Acts. Those of class (a), which comprised all statutes originating in public Bills, were printed with their chapter numbers in large roman numerals; those of class (b), being local or personal statutes which had originated in private Bills but were declared public, were printed as a separately numbered series and bore arabic characters; those of class (c) were not ordered to be printed, and, even if printed privately, were not numbered;
- (3) between 1814 and 1868, local and personal Acts declared public were numbered in small roman numerals, and the class of private and personal Acts was replaced by two classes, private Acts ordered to be printed, and private Acts not printed, which were numbered in one series in arabic characters;
- (4) in 1868, the public general Acts took over the ordinary arabic characters from the private Acts; the class of local and personal Acts was replaced by the class of local Acts as it exists today; private Acts ordered to be printed, and private Acts not printed, continued as before, save that they were now confined to personal statutes, and were numbered in italicised arabic characters;
- (5) in 1876, private Acts not printed ceased to be numbered, but, since 1923, no statutes have fallen into that class; and in 1948, the remaining class of private Acts came to be called personal Acts.



Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(ii) Nature and Classification of Acts/1211. Private Acts.

### **1211. Private Acts.**

An Act is said to be private if it is not one of which judicial notice is taken, and is required to be pleaded and proved by the party seeking to take advantage of it<sup>1</sup>. A private Act often has the nature of a contract<sup>2</sup>.

1 1 BI Com (14th Edn) 85. See further PARAS 1210 ante, 1212 post. See also CIVIL PROCEDURE vol 11 (2009) PARA 889.

2 See PARA 1218 text and note 7 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(ii) Nature and Classification of Acts/1212. Public, private and hybrid Bills.

### **1212. Public, private and hybrid Bills.**

The Bills which on Royal Assent become Acts are divided into public Bills and private Bills, public Bills being subdivided into ordinary Bills and hybrid Bills. Public Bills deal with matters of public interest, while private Bills affect the interests of individuals, or particular localities, and do not involve matters of public policy. The distinction between public and private Bills and that between public and private Acts is thus somewhat different<sup>1</sup> and is complicated by the fact that government Bills are introduced as public Bills, whatever their subject matter. A hybrid Bill is a public Bill which has the character of a private Bill in that it affects the private interests of particular persons or bodies of the same category and on that account attracts parliamentary standing orders relating to private Bills<sup>2</sup>. A public Bill may be general, local or even personal in nature; whichever it may be, it will emerge as a public Act<sup>3</sup>. A private Bill will result in a public Act if local in nature, and a private Act if personal. When, however, the courts are dealing with such matters as the construction and operation of statutes, as opposed to matters of procedure, they tend to use the terms 'public' and 'private' in the wider sense used in relation to Bills<sup>4</sup>.

1 See further PARLIAMENT vol 34 (Reissue) PARA 728 et seq; Erskine May's Parliamentary Practice (21st Edn, 1989) 258, 439, 789, 793-808; Bennion, *Statute Law* (3rd Edn, 1990) Pt I. For an account of the former position see Ilbert's Legislative Methods and Forms (1901 Edn) 28 et seq.

2 See further PARLIAMENT vol 34 (Reissue) PARAS 839-840. As to Bills generally see PARA 1241 et seq post.

3 For modern examples of Acts of a local or personal nature introduced as public Bills see the Covent Garden Market (Financial Provisions) Act 1977; and Mr Speaker King's Retirement Act 1971.

4 In *Dawson v Paver* (1847) 5 Hare 415 at 434, Wigram V-C said 'whether an Act is public or private does not depend on any technical considerations such as having a clause or declaration that the Act shall be deemed a public Act but upon the nature and substance of the case'. See also *Leigh Corpn v British Waterways Board* (1968) 67 LGR 341. As to the special considerations affecting the construction of statutes which are private in this wide sense see PARA 1497 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(ii) Nature and Classification of Acts/1213. Local Acts.

### **1213. Local Acts.**

An Act is said to be local if it is limited in respect of area or 'extent' to a relatively small part of a country<sup>1</sup>. The local Acts comprise all statutes of a local character originating in private Bills, together with statutes confirming provisional orders<sup>2</sup>. Their chapter numbers are indicated by small roman numerals<sup>3</sup>. Examples of local Acts are (1) those conferring on particular local authorities powers not enjoyed by local authorities generally<sup>4</sup>; (2) those establishing particular bodies for the performance of purely local functions<sup>5</sup>; (3) those authorising the carrying out of particular works by commercial concerns (whose overall functions may not be of a purely local nature)<sup>6</sup>, or by other non-governmental bodies; and (4) those relating to particular charitable and educational foundations and institutions<sup>7</sup>.

1 See *R v LCC* [1893] 2 QB 454 at 462, CA, per Bowen LJ. As to extent see PARA 1318 post.

2 As to provisional orders see PARA 1246 post.

3 As to the chapter number of an Act see PARA 1271 post.

4 As to the statutory powers of local authorities generally see LOCAL GOVERNMENT vol 69 (2009) PARA 460; LONDON GOVERNMENT. As to the power of local authorities to promote legislation see LOCAL GOVERNMENT vol 69 (2009) PARA 572; LONDON GOVERNMENT.

5 Eg port and harbour authorities and dock owners: see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 740 et seq.

6 See eg the Scottish Equitable Life Assurance Society Act 1979.

7 See eg the University College London Act 1979; the Salvation Army Act 1980.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(ii) Nature and Classification of Acts/1214. Personal Acts.

### **1214. Personal Acts.**

An Act is said to be personal if its application is limited to certain individuals<sup>1</sup>. The personal Acts comprise all statutes of a personal nature originating in private Bills. They are numbered in italicised arabic figures<sup>2</sup>. Personal Acts are comparatively rare<sup>3</sup>.

1 *R v LCC* [1893] 2 QB 454 at 462, CA, per Bowen LJ.

2 As to the chapter number of an Act see PARA 1271 post.

3 See eg the James Hugh Maxwell (Naturalisation) Act 1975; the Edward Berry and Doris Eileen Ward (Marriage Enabling) Act 1980. Some give authority for particular dealings with private estates, eg the Arundel Estate Act 1957; the Lucas Estate Act 1963. Matters dealt with by such Acts have also included attainder (and the restoration of dignities after attainder), divorce, change of name, and validity of letters patent.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(ii) Nature and Classification of Acts/1215. Principal and amending Acts.

### **1215. Principal and amending Acts.**

A principal Act deals comprehensively with an area of law, whereas an amending Act merely amends a principal Act<sup>1</sup>. The same Act may have the character both of a principal Act (as to the majority of its provisions) and an amending Act (as to the rest).

1 Often the enactments dealing with a particular area of law are consolidated into one principal Act. This may happen successively at intervals extending over many years, as has occurred with income tax legislation and companies legislation. Sometimes a topic is dealt with by a new principal Act which brings a novel approach to a topic, while retaining some of the old law. So far as the old law is reproduced in the new principal Act it is to be regarded in the same way as a consolidation Act: see eg *Bishopsgate Investment Management Ltd (in provisional liquidation) v Maxwell, Cooper v Maxwell, Mirror Group Newspapers plc v Maxwell* [1993] Ch 1 at 21, [1992] 2 All ER 856 at 868, CA; and see *Re Palmer (a debtor)* [1994] Ch 316 at 341, [1994] 3 All ER 835 at 839, CA, per Balcombe LJ. As to consolidation Acts see PARA 1225 post. A principal Act may originate as a codification of common law principles: see eg the Sale of Goods Act 1894 (repealed: see now the Sale of Goods Act 1979; the Sale and Supply of Goods Act 1994; and the Sale of Goods (Amendment) Act 1995). As to codifying Acts see PARA 1226 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(ii) Nature and Classification of Acts/1216. Permanent and temporary Acts.

### **1216. Permanent and temporary Acts.**

Most Acts of Parliament are permanent. This does not mean that they cannot be repealed, but only that they remain in force until they are repealed<sup>1</sup>. Sometimes, however, Parliament deems it expedient to provide in an Act that it shall automatically expire after a specified period, and it is then known as a temporary Act<sup>2</sup>.

On some matters constitutional theory requires that the legislative remedy be merely temporary<sup>3</sup>. In former times the practice of passing temporary Acts was more widespread than is now the case<sup>4</sup>. Modern Acts are made temporary if experimental or controversial, or passed to deal with conditions which it is expected or hoped will be of limited duration<sup>5</sup>. If not renewed, a temporary Act comes to an end in accordance with its own provisions<sup>6</sup>.

1 As to repeals see PARA 1296 et seq post.

2 A part only of an Act may be made temporary (see eg the Health Authorities Act 1995 s 3(1)-(7), (9), which will cease to have effect on 1 April 1996: s 3(10)); and what is said in this title regarding temporary Acts applies also to such a part. The standing orders of the House of Commons require the precise duration of every temporary law or enactment to be expressed in a distinct clause or subsection of the Bill or enactment: HC Standing Orders (1994) (Public Business) no 79. There may be provision for extension of the duration of a temporary Act by resolution of each House of Parliament. Where this provision is not made, but it is nevertheless desired to continue the Act in force, it is included in an Expiring Laws Continuance Act. As to the duration of temporary Acts see further PARA 1281 post; as to repeal by temporary Acts see PARA 1304 post; and as to the effect of the expiry of a temporary Act see PARA 1314 post.

3 Under modern conditions supplies continue to be voted for one year at a time, while the practice with regard to the armed forces is to pass an Act every five years that authorises their annual continuance by an Order in Council requiring an affirmative resolution of each House of Parliament (the current Act is the Armed Forces Act 1991: see s 1; and the Army, Air Force and Naval Discipline Acts (Continuation) Order 1995, SI 1995/1964). There are sound constitutional reasons for these special cases, which do not affect the general principle that every enactment is designed to provide a lasting remedy for a mischief. As to construction by reference to the mischief see PARA 1474 post.

4 In the seventeenth century press censorship, based originally on the royal prerogative, was continued under the Licensing of the Press Act (13 & 14 Cha 2 c 33 (1662)) (repealed). This was limited to two years, but was successively renewed up to 1679. After a gap of six years it was again renewed for seven years and was then further renewed until in 1695 the Commons refused to continue it, thus laying authors open to attacks of literary piracy. This resulted in the passing of the first Copyright Act in 1709 (8 Anne c 21) (repealed).

5 See eg the Prevention of Terrorism (Temporary Provisions) Act 1989; the Northern Ireland (Emergency Provisions) Act 1991 Pts I-VIII (ss 1-64 (as amended) except (1) s 7, Sch 1 Pt III and, so far as they relate to offences which are scheduled offences by virtue of Sch 1 Pt III, ss 3, 9, 10; (2) ss 63, 64; and (3) Sch 4 para 20: see s 69(2)) (s 69(2) prospectively amended by the Criminal Justice Act 1993 s 79(13), Sch 5 Pt I para 17(3), as from a day to be appointed under s 78(3)); and the Northern Ireland (Emergency and Prevention of Terrorism Provisions) (Continuance) Order 1995, SI 1995/1566.

6 *Willcock v Muckle* [1951] 2 KB 844, [1951] 2 All ER 367, DC. If a Bill to continue such an Act is not passed in time, the Act may be saved by the Acts of Parliament (Expiration) Act 1808 (see PARA 1281 text and note 7 post). If it seems that the Act should be made permanent after all, this may be done. See eg the Expiring Laws Act 1969 s 1 (repealed), which made permanent the Accommodation Agencies Act 1953 (see AGENCY vol 1 (2008) PARA 282) and the Children and Young Persons (Harmful Publications) Act 1955 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 623; PRESS, PRINTING AND PUBLISHING vol 36(2) (Reissue) PARA 422), effecting the necessary alterations to their wording. An earlier example is the Treason Act 1817 s 1 which made 'perpetual' the Treason Act 1795.

## UPDATE

### 1216 Permanent and temporary Acts

NOTE 5--1989 Act replaced by the Terrorism Act 2000. 1991 Act, replaced by the Northern Ireland (Emergency Provisions) Act 1996, repealed: Terrorism Act 2000 Sch 16.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(ii) Nature and Classification of Acts/1217. Self-acting and adoptive Acts.

### 1217. Self-acting and adoptive Acts.

Most Acts of Parliament are self-acting in the sense that they come into operation as soon as passed or, where a special commencement provision has been included, on the date specified by or under that provision<sup>1</sup>. However, in some cases an Act provides that the operation of a further procedure is required before the Act can come into force in a particular area, or as respects a particular subject matter. Examples are adoptive Acts<sup>2</sup> and Clauses Acts<sup>3</sup>.

1 As to the commencement of Acts see PARA 1279 et seq post.

2 As to adoptive Acts see PARA 1228 post.

3 As to Clauses Acts see PARA 1229 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(ii) Nature and Classification of Acts/1218. Acts whose language may be treated as updated and Acts whose language is fixed in time.

**1218. Acts whose language may be treated as updated and Acts whose language is fixed in time.**

One distinction between Acts is concerned with whether or not without specific amendment the language of an Act can be treated as updated in response to conditions which have changed since it was passed. In the usual case the Act is intended to develop in meaning with altering circumstances<sup>1</sup>; but in comparatively rare cases an Act is intended to be fixed in the time of its passing, to be of unchanging effect and to be applied in the same way whatever changes might occur after its passing, having as it were a once for all operation. Such an Act must be construed as if one were interpreting it the day after it was passed<sup>2</sup>. Examples of an Act whose language is fixed in time are an Act setting up a constitution<sup>3</sup>, an Act implementing an international convention<sup>4</sup>, an indemnity Act<sup>5</sup>, and an Act which, like many private Acts<sup>6</sup>, has the nature of a contract<sup>7</sup>.

1 As to the updating construction of such an Act see PARA 1473 post.

2 *The Longford* (1889) 14 PD 34 at 36, CA, per Lord Esher.

3 See eg *Re the Regulation and Control of Aeronautics in Canada* [1932] AC 54 at 70.

4 See PARA 1222 post.

5 See PARA 1231 post.

6 As to private acts see PARA 1211 ante.

7 See eg *A-G for Alberta v Huggard Assets Ltd* [1953] AC 420 at 442, [1953] 2 All ER 951 at 957, PC; *Sion College v London Corpn* [1901] 1 KB 617, CA; *Milnes v Huddersfield Corpn* (1886) 11 App Cas 511, HL; *Perchard v Heywood* (1800) 8 Term Rep 468. See also *Lord Colchester v Kewney* (1866) LR 1 Exch 368 at 380 (enactment exempting 'any hospital' from former land tax applied only to hospitals in existence when Act was passed); and PARA 1303 note 4 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(ii) Nature and Classification of Acts/1219. Ancient and modern statutes.

**1219. Ancient and modern statutes.**

Ancient statutes (*antiqua statuta*) comprise those enacted before the first year of Edward III (1327) and modern statutes (*nova statuta*) are those passed since that time<sup>1</sup>.

1 Bac Abr, Statute. See also 1 Statutes Revised (3rd Edn) 64n, where it is pointed out that *antiqua statuta* include certain statutes which are of uncertain date but are attributed to the period covering the reigns of Henry III, Edward I and Edward II. The classification has no significance except, perhaps, in the field of construction. For examples see *R v Gardner* (1837) 6 Ad & El 112; and *Wilson v Knubley* (1806) 7 East 128.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(ii) Nature and Classification of Acts/1220. Acts in *pari materia*.

## **1220. Acts in *pari materia*.**

Acts are said to be in *pari materia*<sup>1</sup> if they are (1) Acts which have been given a collective title<sup>2</sup>; or (2) Acts as to which it is stated in the latest of the Acts that they are to be construed as one<sup>3</sup>; or (3) Acts having short titles that (apart from the calendar year) are identical<sup>4</sup>; or (4) other Acts which deal with the same subject matter on the same lines<sup>5</sup>. Acts in *pari materia* 'are to be taken together as forming one system, and as interpreting and enforcing each other'<sup>6</sup>.

1 From the Latin *pars* or *paris*, meaning equal.

2 As to collective titles see PARA 1254 post.

3 Where two Acts are required by a provision in the later Act to be construed as one, every enactment in the two Acts is to be construed as if contained in a single Act, except in so far as the context indicates that the later Act was intended to modify the earlier Act. The like principle applies where more than two Acts are to be construed as one, or where a part only of an Act is to be construed as one with other enactments. See *Canada Southern Rly Co v International Bridge Co* (1883) 8 App Cas 723 at 727, PC, per Lord Selborne LC; *Hart v Hudson Bros Ltd* [1928] 2 KB 629; *Phillips v Parnaby* [1934] 2 KB 299; *York City Council v Poller* [1976] Crim LR 313.

4 *R v Wheatley* [1979] 1 All ER 954 at 957, [1979] 1 WLR 144 at 147, CA. As to the short title see PARA 1268 post.

5 See eg *Crosley v Arkwright* (1788) 2 Term Rep 603 at 609; *Davis v Edmonson* (1803) 3 Bos & P 382, Ex Ch; *Redpath v Allan, The Hibernian* (1872) LR 4 PC 511 at 518; *Mersey Docks and Harbour Board v Henderson Bros* (1888) 13 App Cas 595, HL; *Penn-Texas Corp v Murat Anstalt (No 2)* [1964] 2 QB 647, [1964] 2 All ER 594, CA; *R v Wheatley* [1979] 1 All ER 954, [1979] 1 WLR 144, CA; *Allgemeine Gold-und Silberscheideanstalt v Customs and Excise Comrs* [1980] QB 390, [1980] 2 All ER 138, CA; *Hammersmith and Fulham London Borough v Harrison* [1981] 2 All ER 588, [1981] 1 WLR 650, CA; *R v Bouch* [1983] QB 246, [1982] 3 All ER 918, CA.

6 As stated by 12 judges in *R v Palmer* (1785) 1 Leach 352 at 355. See also *R v Loxdale* (1758) 1 Burr 445 at 447 per Lord Mansfield ('Where there are different statutes in *pari materia*, though made at different times, or even expired and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other'); *Re Copeland, ex p Copeland* (1852) 2 De GM & G 914 at 920, 22 LJ Bcy 17 at 21; *R v Titterton* [1895] 2 QB 61 at 67, DC; *Powell v Cleland* [1948] 1 KB 262 at 273, [1947] 2 All ER 672 at 676, CA; *Beaman v ARTS Ltd* [1949] 1 KB 550 at 567, [1949] 1 All ER 465 at 470, CA; *Nestlé Co Ltd v IRC* [1953] Ch 395, [1953] 1 All ER 877, CA; *Caravans and Automobiles Ltd v Southall Borough Council* [1963] 2 All ER 533, [1963] 1 WLR 690, DC; *Ealing Corp v Ryan* [1965] 2 QB 486, [1965] 1 All ER 137, DC; *R v Thorpe* [1987] 2 All ER 108, [1987] 1 WLR 383, CA. As to the application of the principle in *Barras v Aberdeen Steam Trawling and Fishing Co Ltd* [1933] AC 402 at 411, HL ('the *Barras* principle') to Acts in *pari materia* see PARA 1416 post. As to construction as one see PARA 1485 post. See also INCOME TAXATION vol 23(1) (Reissue) PARA 24.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iii) Particular Types of Act/A. CONSTITUTIONAL, TREATY AND FINANCIAL ACTS/1221. Constitutional Acts.

## **(iii) Particular Types of Act**

### **A. CONSTITUTIONAL, TREATY AND FINANCIAL ACTS**

## 1221. Constitutional Acts.

The British Constitution is said to be 'unwritten'. This only means that, unlike most countries, the United Kingdom does not possess a single comprehensive constitution and much of its constitutional principle is embodied in the common law. There are nevertheless a number of historic statutes regarded as embodying and setting forth the state's constitutional principles<sup>1</sup>. Any modern Act which amends or adds to these may also be regarded as a constitutional Act<sup>2</sup>. The main significance of classing an Act as a constitutional Act lies in the nature of the interpretative criteria which then apply to it. In particular, the rights the Act confers, having the quality of constitutional rights, will be regarded by the courts as fundamental and not to be displaced except by clear words<sup>3</sup>.

1 See eg Magna Carta (1215); the Bill of Rights (1689); the Act of Settlement (1700); the Septennial Act 1715.

2 See eg the Parliament Acts 1911 and 1949; the Crown Proceedings Act 1947; the Representation of the People Acts 1949 to 1983; the House of Commons Disqualification Acts 1957 and 1975; the Crown Estate Act 1961; and the Supreme Court Act 1981.

3 See PARA 1299 text and note 5 post.

## UPDATE

### 1221 Constitutional Acts

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iii) Particular Types of Act/A. CONSTITUTIONAL, TREATY AND FINANCIAL ACTS/1222. Treaty Acts.

## 1222. Treaty Acts.

An international treaty may have three different kinds of status, considered as a source of law<sup>1</sup>:

- (1) an Act may embody, whether or not in the same words, provisions having the effect of the treaty (direct enactment of the treaty)<sup>2</sup>;
- (2) an Act may provide that the treaty is itself to have effect as law, leaving the treaty's provisions to apply with or without modification (indirect enactment of the treaty)<sup>3</sup>;
- (3) the treaty may be left simply as an international obligation, being referred to in the construction of a relevant enactment only so far as called for by the presumption that Parliament intends to comply with public international law<sup>4</sup>.

Acts which ratify a treaty or other international agreement, or give its provisions the force of law, or otherwise relate to it, form a distinct class of growing importance akin to the class of constitutional Acts<sup>5</sup>.

1 A treaty is not self-executing in law: *Fothergill v Monarch Airlines Ltd* [1981] AC 251 at 271, [1980] 2 All ER 696 at 699, HL, per Lord Wilberforce, following *The Parlement Belge* (1880) 5 PD 197. It is an act of the executive, which does not have power to legislate in this way: see *Kaur v Lord Advocate* [1980] 3 CMLR 79 (Ct of Sess). See also (1982) 45 MLR 183. As to the executive see PARA 1325 et seq post.

2 An example of direct enactment of a treaty is furnished by the Arbitration Act 1975, the long title of which describes it as 'an Act to give effect to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards'.

3 An example of indirect enactment of a treaty is furnished by the Carriage by Air Act 1961 s 1(1): see *Fothergill v Monarch Airlines Ltd* [1981] AC 251, [1980] 2 All ER 696, HL. The effect of indirectly enacting the provisions of a treaty is 'to imbue them with the character of a statutory enactment': *The Hollandia* [1982] QB 872 at 885, [1982] 1 All ER 1076 at 1081, CA, per Sir Sebag Shaw (on appeal [1983] 1 AC 565, [1982] 3 All ER 1141, HL).

4 As to this presumption see PARA 1439 post.

5 As to constitutional Acts see PARA 1221 ante. As to the treaties etc relating to the European Community see PARA 1203 ante. As to the use of treaties and their travaux préparatoires in interpretation see PARA 1426 post.

## UPDATE

### 1222 Treaty Acts

NOTE 2--1975 Act repealed by Arbitration Act 1996 Sch 4 and replaced in part by 1996 Act. As to the recognition and enforcement of certain foreign awards, see now 1996 Act Pt III (ss 99-104) (see ARBITRATION vol 2 (2008) PARA 1288-1290).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iii) Particular Types of Act/A. CONSTITUTIONAL, TREATY AND FINANCIAL ACTS/1223. Financial Acts.

### 1223. Financial Acts.

Finance Acts and other Acts dealing with taxation and the public revenue form a distinct class emphasising the dominant role of the House of Commons in financial matters. It is of constitutional importance that taxes should be levied fairly, collected honestly and without oppression and expended in accordance with the will of Parliament<sup>1</sup>. Ministers make known to the House of Commons the financial requirements of the government and that House in return grants such aids or supplies as are needed<sup>2</sup>. Parliament provides by taxation, and by the appropriation of other sources of public income, the ways and means to meet the supplies it has granted. The Crown demands money, the Commons grant it and the Lords assent to the grant<sup>3</sup>.

In recognition of the exclusive power of the House of Commons over the raising and expenditure of public money, Parliament has by statute endowed certain orders of that House with legislative effect. Delegated legislative power is conferred on the House of Commons by the Provisional Collection of Taxes Act 1968<sup>4</sup>. This enables the House to pass resolutions which, for a limited period only, have statutory effect as if contained in an Act<sup>5</sup>.

Their financial nature affects the form of certain Bills and their enacting procedure. Some, such as Bills required to be founded on resolutions, have a special procedure. The main examples are Consolidated Fund Bills, which are founded on supply resolutions, and Finance Bills, which are founded on ways and means resolutions. Other examples include Civil List Bills<sup>6</sup>.



1 As to extra-statutory concessions and the power to suspend an Act see PARAS 1293, 1315 post. As to the interpretative criteria applying to taxing Acts see PARA 1464 post; and see INCOME TAXATION vol 23(1) (Reissue) PARA 22.

2 Supplies are authorised by Appropriation Acts. The Bills for these have a formal nature and are not debated or amended during their passage.

3 See Erskine May's Parliamentary Practice (21st Edn, 1989) 684.

4 See the Provisional Collection of Taxes Act 1968 s 1 (as amended); and INCOME TAXATION vol 23(1) (Reissue) PARA 18. In relation to stamp duty see the Finance Act 1973 s 50 (as amended); and STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1106 note 2 ante.

5 As to the passing of money Bills under the Parliament Acts 1911 and 1949 see PARA 1246 post.

6 As to these types of Bills and the parliamentary procedure governing them see Erskine May's Parliamentary Practice (21st Edn, 1989) 751-753. As to the words of grant see PARA 1274 post. See also PARLIAMENT vol 78 (2010) PARA 1046.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iii) Particular Types of Act/B. LAW REFORM ACTS/1224. Nature of law reform Acts.

## ***B. LAW REFORM ACTS***

### **1224. Nature of law reform Acts.**

A law reform Act may overhaul and modernise the law in a particular area, often following an inquiry into the matter by an ad hoc commission or committee<sup>1</sup>; or it may correct the form of the law<sup>2</sup>. The principal examples of law reform Acts are consolidation Acts<sup>3</sup>, codifying Acts<sup>4</sup> and miscellaneous Acts including Statute Law Revision Acts, Short Titles Acts and Statute Law (Repeals) Acts<sup>5</sup>.

1 See eg the Highways Act 1959 (repealed: see now the Highways Act 1980); the Consumer Credit Act 1974; the Insolvency Act 1986.

2 The Law Commission is the principal agent for the promotion of both types of reform Act. As to the functions of the Law Commission see PARA 1244 post.

3 See PARA 1225 post.

4 See PARA 1226 post.

5 See PARA 1227 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iii) Particular Types of Act/B. LAW REFORM ACTS/1225. Consolidation Acts.

### **1225. Consolidation Acts.**

A consolidation Act is a form of principal Act<sup>1</sup> which presents the whole body of the statute law on a subject in complete form, repealing the former Acts<sup>2</sup>. When drafting a consolidation Act the practice is not to change the existing wording, except so far as may be required for purposes of verbal 'carpentry', and not to incorporate court rulings. This is known as 'straight' consolidation, the product being a form of declaratory enactment<sup>3</sup>. The difference between a consolidation Act and a codifying Act is that the latter, unlike the former, incorporates common law rules not previously codified<sup>4</sup>. It can be determined from the long title whether or not an Act is a consolidation Act<sup>5</sup>.

A Bill solely effecting consolidation, that is consisting of 'straight' consolidation, is virtually immune from amendment during its passage through Parliament<sup>6</sup>. Since 1949 this privilege has extended to Bills which seek to consolidate the law with corrections and minor improvements<sup>7</sup> and since 1967 a similar privilege has attached to Bills to consolidate enactments with amendments to give effect to recommendations made by the Law Commission<sup>8</sup>. If the existing law is found to require more amendment than is possible in pursuance of Law Commission recommendations, a possible procedure is for an amending Act to be passed, followed immediately by a consolidation Act<sup>9</sup>, but Acts to consolidate the law with amendments are occasionally found<sup>10</sup>.

1 As to principal Acts see PARA 1215 ante.

2 *Thames Conservators v Smeed, Dean & Co* [1897] 2 QB 334 at 346, CA, per Chitty LJ. For the meaning of 'statute law' see PARA 1205 ante. The enactments consolidated are those which are in *pari materia*: see PARA 1220 ante. The practice of consolidation goes back at least to the sixteenth century: see eg 5 Eliz 1 c 4 (Artificer's and Apprentices) (1562-3) (repealed). This, in the words of its preamble, 'digested and reduced into one sole Lawe and Statute' such of the existing statutes relating to apprentices, servants and labourers 'as are meet to bee continued'. However it was only in the latter part of the nineteenth century, and particularly after the establishment of the Statute Law Committee in 1868 and the Parliamentary Counsel Office in 1869, that consolidation became the regular feature of the legislative programme which, with one or two interruptions, it has since remained. As to the Statute Law Committee, replaced in 1991 by the advisory committee on statute law, see PARA 1251 post; and as to the Parliamentary Counsel Office see PARA 1242 post. Under the Law Commissions Act 1965 s 3(1)(d) the Law Commission has the function of preparing, at the request of the Lord Chancellor, comprehensive programmes of consolidation and of preparing draft Bills pursuant to such programmes approved by the Lord Chancellor: see PARA 1244 post. The annual volume of the Public General Acts and Measures now includes tables, which have no official authority, of derivations and destinations for the consolidation Acts of the year.

3 See *IRC v Joiner* [1975] 3 All ER 1050 at 1062, [1975] 1 WLR 1701 at 1715, HL, per Lord Diplock. As to declaratory enactments see PARA 1236 post.

4 As to codifying Acts see PARA 1226 post.

5 As to the long title see PARA 1264 post. As to the interpretation of consolidation Acts see PARA 1417 post.

6 Apart from drafting amendments, amendments to the Bill are allowed for the sole purpose of causing it to state the existing law correctly and are not in order if they seek to alter that law; and the House of Commons in session 1994-95 made an order, to have effect initially only for that session, that consolidation and other types of bill within the order need not, in certain circumstances, be considered in committee: see PARLIAMENT vol 34 (Reissue) PARA 843.

7 See the Consolidation of Enactments (Procedure) Act 1949 s 1; and PARA 1247 post. See also Erskine May's Parliamentary Practice (21st Edn, 1989) 668-669. For an example of an Act covered by this procedure see the Commonwealth Development Corporation Act 1978; and see the parliamentary debates in 387 HL Official Report (5th series), 14 December 1977, col 2217, 388 HL Official Report (5th series), 26 January 1978, col 472.

8 See 283 HL Official Report (5th series), cols 177-184, 191-197; 749 HC Official Report (5th series) cols 1-25; Erskine May's Parliamentary Practice (21st Edn, 1989) 668-669; and HL Standing Orders (1994) (Public Business) no 49(4); HC Standing Orders (1994) (Public Business) no 123(1)(d). For an example of an Act covered by this procedure see the Rent Act 1977; and cf the Rent Bill (Law Com no 81).

9 See eg the Land Drainage (Amendment) Act 1976 and the Land Drainage Act 1976 (both repealed: see now the Land Drainage Act 1991).

10 See eg the Supreme Court Act 1981; the Insolvency Act 1986.

## UPDATE

### 1225 Consolidation Acts

NOTE 7--1949 Act s 1 amended: Constitutional Reform Act 2005 Sch 6 para 6. 1978 Act replaced by Commonwealth Development Corporation Act 1999 (amended by SI 2009/1941), which is not a consolidation Act but makes new provision about the Commonwealth Development Corporation.

NOTE 10--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iii) Particular Types of Act/B. LAW REFORM ACTS/1226. Codifying Acts.

### 1226. Codifying Acts.

The purpose of a codifying Act is to present an orderly and authoritative statement of the leading rules of law on a given subject, whether they are to be found in statute law or common law<sup>1</sup>. The difference between a consolidation Act and a codifying Act is thus that the latter, unlike the former, incorporates common law rules not previously codified<sup>2</sup>. Strictly, neither type of Act incorporates substantive alteration of the law; the essential purpose is to put the law into a better form without changing its substance. Between 1882 and 1906 Parliament enacted four codifying Acts of this type<sup>3</sup>, but the only codification attempted since that time has been partial, in conjunction with amendments to the law<sup>4</sup>.

1 See Bennion, *Statute Law* (3rd Edn, 1990) 74-77. For the meaning of 'statute law' see PARA 1205 ante. The enactments included in the codification are those which are in pari materia: see PARA 1220 ante. As to the interpretation of codifying Acts see PARA 1418 post. The Law Commission includes in its functions the review of the law with a view to its codification: see the Law Commissions Act 1965 s 3(1); and PARA 1244 post.

2 As to consolidation Acts see PARA 1225 ante.

3 I.e. the Bills of Exchange Act 1882; the Partnership Act 1890; the Sale of Goods Act 1893 (see now the Sale of Goods Act 1979, which consolidated the Act of 1893 except for s 26, now consolidated as the Supreme Court Act 1981 s 138 (amended by the Courts and Legal Services Act 1990 s 15(1)); and the Marine Insurance Act 1906.

4 See eg the Criminal Damage Act 1971; and the Criminal Law Act 1977 Pt I (ss 1-5) (as amended) (partial codification of the law relating to conspiracy: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 65 et seq). These Acts were passed as a result of reports of the Law Commission on criminal law. A criminal code, still not yet implemented, was envisaged by the Law Commission as far back as 1968 (see Second Programme of Law Reform (Law Com no 14) 6; Thirteenth Annual Report 1977-78 (Law Com no 82) PARA 2.11); *Legislating the Criminal Code: Offences against the Person and General Principles* (Cm 2370; Law Com no 218). The Law Commission has made specific recommendations in other major areas of law such as the law of contract and the law of landlord and tenant (see Eighth Annual Report 1972-73 (Law Com no 58) PARAS 3-5, 13-17) although eventual codification is not necessarily ruled out; for a detailed account see Bennion in G Zellick (ed), *The Law Commission and Law Reform* (Sweet & Maxwell 1988) 60 at 62-65.

## UPDATE

### 1226 Codifying Acts

NOTE 3--Supreme Court Act 1981 (now Senior Courts Act 1981) s 138 repealed: Courts Act 2003 Sch 8 para 264, Sch 10.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iii) Particular Types of Act/B. LAW REFORM ACTS/1227. Acts revising statute law.

### **1227. Acts revising statute law.**

In modern times it has been found that there is a place for Acts which formally revise the statute law as expressed in Acts of Parliament<sup>1</sup>. The purpose is not to alter the substance of the law, but to repeal and thus remove from the statute book enactments which have become obsolete, spent, unnecessary or superseded<sup>2</sup> or which no longer serve any useful purpose<sup>3</sup>. In 1965 the function of preparing programmes of statute law revision and of preparing draft Bills in pursuance of the programmes was conferred on the Law Commission<sup>4</sup>. As a result of the work of the commission and a change of parliamentary procedure the passing of Statute Law Revision Acts has, since 1969, been largely superseded by the passing of Statute Law (Repeals) Acts. The purpose of such an Act is wider than that of a Statute Law Revision Act and is to promote the reform of the statute law by the repeal of enactments which are no longer of practical utility<sup>5</sup>. Statute Law Revision Bills and Statute Law (Repeals) Bills pass through Parliament in the same way as consolidation Bills<sup>6</sup>.

The work of statute law reform is also aimed at simplifying the statute book as represented by the revised editions of the statutes published from time to time<sup>7</sup>. Since 1890 a number of Statute Law Revision Acts and Statute Law (Repeals) Acts have contained additional provision to that end and, in particular, provision authorising the omission of matter not actually repealed from the revised editions of the statutes<sup>8</sup>.

1 For the meaning of 'statute law' see PARA 1205 ante.

2 See *Leeds Industrial Co-operative Society Ltd v Slack* [1924] AC 851 at 862, HL, per Viscount Finlay. See also the long title of the Statute Law Revision Act 1966 (repealed).

3 The first Act for the revision of the statute law in this sense was 19 & 20 Vict c 64 (1856) (repealed), which repealed 120 obsolete statutes. When short titles began to be bestowed on Acts (see PARA 1268 post), revision Acts were usually given a short title beginning 'Statute Law Revision', except where they were for the purpose of conferring short titles on earlier Acts which lacked them (see the Short Titles Act 1892 (repealed); the Short Titles Act 1896; the Statute Law Revision Act 1948 s 5, Sch 2; the Statute Law (Repeals) Act 1978 s 2, Sch 3). As to the special savings formerly included in Statute Law Revision Acts see PARA 1310 note 2 post.

4 See the Law Commissions Act 1965 s 3(1)(d); and PARA 1244 post.

5 See 302 HL Official Report (5th series) cols 311-318; Statute Law Revision: First Report (Law Com no 22). See eg the Statute Law (Repeals) Act 1993, which promotes reform of the statute law by the repeal, in accordance with recommendations of the Law Commission, of certain enactments which are no longer of practical utility.

6 See PARA 1225 ante; HL Standing Orders (1994) (Public Business) no 49(2), (5); and HC Standing Orders (1994) (Public Business) no 123(1)(b), (e). As to the procedure governing these Bills see PARLIAMENT vol 34 (Reissue) PARAS 843-844.

7 As to revised editions of statutes see PARA 1251 post.

8 See eg the Statute Law Revision Act 1890 s 1 (repealed) which, setting a precedent repeated many times since, authorised the omission of a number of parts of titles, preambles and recitals and the inclusion of any

brief explanatory statement thereby rendered necessary; the Statute Law Revision Act 1894 s 4 (repealed) and the Statute Law Revision Act 1948 s 3(1)(a), both providing for the omission of words of enactment; and the Statute Law Revision Act 1950, which allows the omission from future editions of revised statutes of enactments relating to matters which are within the powers of certain self-governing countries within, or formerly within, the Commonwealth, or within the powers which the Northern Ireland Parliament would have had before the Northern Ireland Constitution Act 1973 was passed: see the Statute Law Revision Act 1950 s 3; the Northern Ireland Constitution Act 1973 s 40(2). For other provisions directed to the same end see the Statute Law Revision Act 1893 s 3 which authorises the short title of a statute to be substituted for any other reference to the statute in any statute printed in any revised edition; the Statute Law Revision Act 1958 s 4 which repealed certain Acts relating to government obligations in connection with the 1914-18 war and re-enacted the only provision of those Acts still in force; and the Statute Law (Repeals) Act 1969 ss 2, 3 which re-enacted certain statutory provision relating to advowsons and rentcharges. For the extent to which these provisions are relied on in *Statutes in Force* see the Guide to the Edition.

## UPDATE

### 1227 Acts revising statute law

NOTE 8--Northern Ireland Constitution Act 1973 s 40 repealed: Northern Ireland Act 1998 s 100(2), Sch 15.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iii) Particular Types of Act/C. ADOPTIVE AND CLAUSES ACTS/1228. Adoptive Acts.

## C. ADOPTIVE AND CLAUSES ACTS

### 1228. Adoptive Acts.

An adoptive Act is law only in areas where it has been locally adopted, by whatever procedure is laid down by the Act. Usually the local authority is the activating agent, coupled with a local poll<sup>1</sup>. Acts of this type are an example of legislation by reference<sup>2</sup>. Mainly a nineteenth century phenomenon, they saved the trouble of procuring the passage of a local or private Act, or when they did not altogether do that, they at least greatly shortened the language needed in such Acts. By providing common-form provisions, they produced a useful standardisation of certain areas of law.

Parts only of an Act may be adoptive<sup>3</sup>.

1 See eg the Baths and Washhouses Acts 1846 to 1899 (repealed); the Burial Acts 1852 to 1906 (repealed in part); the Public Libraries Acts 1892 to 1919 (repealed); the Sunday Entertainments Act 1932.

2 See PARA 1257 post.

3 See eg (1) the Highways Act 1980 s 204 (prospectively amended by the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 17 as from a day to be appointed) (providing for the adoption by a local authority of an advance payments code for the making up of private streets); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 177; (2) the Local Government (Miscellaneous Provisions) Act 1982 s 2 (empowering a local authority to resolve that provisions relating to the licensing of sex shops (contained in Sch 3) are to apply in the authority's area).

## UPDATE

### 1228 Adoptive Acts

NOTE 1--1932 Act repealed: Licensing Act 2003 Sch 6 para 11, Sch 7.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iii) Particular Types of Act/C. ADOPTIVE AND CLAUSES ACTS/1229. Clauses Acts.

### **1229. Clauses Acts.**

Clauses Acts set out common-form provisions which are made law in a particular context by being incorporated in what is known as the special Act. They were a feature of legislation in the middle of the nineteenth century and of the years 1845 and 1847 in particular. Their outstanding characteristic was that their substantive provisions had no independent legislative force. At that time, certain classes of transaction requiring in each case specific statutory authority, for example the formation of companies, the construction of railways and the taking of land for the purposes of public undertakings, were of such frequent occurrence that Parliament sought to reduce the length of the private Bills involved, and to promote their uniformity, by enacting once and for all, in a Clauses Act, the general principles which were to govern each class of transaction and by providing in the Act that its provisions should be treated as incorporated with each subsequent 'special Act' save in so far as expressly varied or excluded by the special Act<sup>1</sup>.

Of the many Clauses Acts that were passed, those of most significance today are the Lands Clauses Acts, which relate to the taking of land for the purposes of public undertakings<sup>2</sup>.

Some Clauses Acts are also adoptive, combining the features of both types of Act<sup>3</sup>.

<sup>1</sup> See *Metropolitan District Rly Co v Sharpe* (1880) 5 App Cas 425 at 430, HL, per Lord Selborne LC; Ilbert's *Legislative Methods and Forms* (1901 Edn) 260-261. As to the interpretation of enactments so incorporated see PARAS 1396, 1485 post.

<sup>2</sup> I.e. the Lands Clauses Consolidation Act 1845; the Lands Clauses Consolidation Act Amendment Act 1860; and all amending Acts for the time being in force: see the Interpretation Act 1978 s 5, Sch 1. As to the Lands Clauses Acts see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 509 et seq. Other examples, omitting any mention of amending Acts, include the Companies Clauses Consolidation Act 1845 (see COMPANIES); the Railways Clauses Consolidation Act 1845 (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 291 et seq); the Markets and Fairs Clauses Act 1847 (see MARKETS, FAIRS AND STREET TRADING vol 29(2) (Reissue) PARA 1011); and the Harbours, Docks and Piers Clauses Act 1847 (see PORTS AND HARBOURS).

<sup>3</sup> As to adoptive Acts see PARA 1228 ante. The Town Police Clauses Act 1847 is an adoptive Act and is also, as its short title indicates, a Clauses Act.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iii) Particular Types of Act/D. VALIDATING AND INDEMNITY ACTS/1230. Validating Acts.

### **D. VALIDATING AND INDEMNITY ACTS**

#### **1230. Validating Acts.**

A validating Act removes actual or possible invalidity or legal disability by asserting or confirming the validity of the matter in question, for example the exercise or purported exercise of a statutory power<sup>1</sup>.

<sup>1</sup> See eg the National Health Service (Invalid Direction) Act 1980 (repealed), reversing *R v Secretary of State for Social Services, ex p Lewisham, Lambeth and Southwark London Borough Councils* (1980) Times, 26 February. See also *Re Fletcher, ex p Fletcher v Official Receiver* [1956] Ch 28, [1955] 2 All ER 592, CA. As to the presumption of validity see PARA 1256 post; and as to the doctrine of ultra vires see PARA 1341 post. See also PARA 1367 note 9 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iii) Particular Types of Act/D. VALIDATING AND INDEMNITY ACTS/1231. Indemnity Acts.

### **1231. Indemnity Acts.**

Acts of indemnity, amnesty or oblivion relieve named individuals or groups from liability for breaches of law. An indemnity Act may on the other hand be general in its application<sup>1</sup>.

<sup>1</sup> See eg the National Fire Service Regulations (Indemnity) Act 1944; and the Town and Country Planning Regulations (London) (Indemnity) Act 1970 (both repealed).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iv) Nature and Classification of Enactments/1232. Nature of an 'enactment'.

## **(iv) Nature and Classification of Enactments**

### **1232. Nature of an 'enactment'.**

The term 'enactment' denotes the whole or any part of an Act<sup>1</sup> or an instrument of subordinate legislation<sup>2</sup>. The term is also used to include the whole or any part of a Measure<sup>3</sup>. A comparable term is 'statutory provision'<sup>4</sup>. The term 'enactment', to put it another way, often denotes a single statutory proposition, whether embodied in one sentence or a group of sentences (perhaps variously derived from different Acts or other instruments)<sup>5</sup>. Since in legislation the singular includes the plural<sup>6</sup> the term may also denote, depending on the context, two or more such propositions<sup>7</sup>. Where an Act passed after 1889 describes or cites a portion of an enactment by referring to words, sections or other parts from or to which (or from and to which) the portion extends, the portion described or cited is to be construed as including the words, sections or other parts referred to unless the contrary intention appears<sup>8</sup>.

<sup>1</sup> *R v Bakewell* (1857) 7 E & B 848 at 851; *Wakefield and District Light Rlys Co v Wakefield Corpn* [1906] 2 KB 140 at 145-146 per Ridley J (affd [1907] 2 KB 257, CA; sub nom *Wakefield Corpn v Wakefield and District Light Rly Co* [1908] AC 293, HL), where it was held that a reference in the Light Railways Act 1896 s 12 (repealed) to 'the general enactments relating to railways' included a reference to the Public Health Act 1875 s 211 (repealed).

2 The increasing practice of applying the term 'enactment' to subordinate legislation is shown by the fact that in the application of the Interpretation Act 1978 to Acts passed, or subordinate legislation made, after 1978, all references to an enactment include an enactment comprised in subordinate legislation, whenever made, and references to the passing or repeal of an enactment are to be construed accordingly: see s 23(2). For these purposes, 'subordinate legislation' means Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act; and 'Act' includes a local and personal or private Act: s 21(1). Section 23(2) does not, however apply to Orders in Council made under the Statutory Instruments Act 1946 s 5 (see PARA 1516 post) or under the Northern Ireland Act 1974 s 1(3), Sch 1 (as amended): Interpretation Act 1978 s 23(2). See further *Rathbone v Bundock* [1962] 2 QB 260 at 273, [1962] 2 All ER 257 at 259, DC, per Ashworth J, where it was held that references to 'enactments' in the Road Traffic Act 1960 did not include regulations because 'the language used...strongly suggests that in this particular Act the draftsman was deliberately distinguishing between an enactment and a statutory regulation...'. For a decision where the context indicated a contrary ruling see *Allsop v North Tyneside Metropolitan Borough Council* [1991] RVR 209, (1992) 156 LGR 1007, DC.

3 See eg the Statute Law (Repeals) Act 1977 s 1(1), Sch 1 Pt V. As to Measures see PARA 1205 ante.

4 This term is used in the Supreme Court Act 1981: see the definition of the term in s 151(1).

5 It is in this sense that the term is mainly used in this title. For the meaning of 'statutory' see PARA 1205 ante.

6 See the Interpretation Act 1978 ss 6(c), 23.

7 As to the construction of a reference to an enactment see further *ibid* s 20(2); and PARA 1295 post.

8 *Ibid* ss 20(1), 22(1), Sch 2 para 3. Thus where an Act amends another by providing that the words from 'cat' to 'dog' are to be omitted, the words to be left out include both 'cat' and 'dog'. The rule is the opposite when a Bill is proceeding through Parliament, so that an amendment in the same terms to a Bill envisages the omission of the intervening words only.

## UPDATE

### 1232 Nature of an 'enactment'

NOTE 4--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iv) Nature and Classification of Enactments/1233. Methods of classifying enactments.

### 1233. Methods of classifying enactments.

A single Act may contain enactments<sup>1</sup> of various types, so that as well as considering the classification of whole Acts<sup>2</sup> it is also necessary to examine the classification of certain enactments considered as individual statutory propositions. These classifications are neither mutually exclusive nor in all cases exhaustive. They are mainly of practical significance in relation to statutory interpretation, and are as follows: between express and implied enactments<sup>3</sup>; general and particular enactments<sup>4</sup>; declaratory and amending enactments<sup>5</sup>; substantive and procedural enactments<sup>6</sup>; mandatory and directory enactments<sup>7</sup>; civil and criminal enactments<sup>8</sup> and penal and non-penal enactments<sup>9</sup>.

1 For the meaning of 'enactment' see PARA 1232 ante.

2 See PARA 1207 et seq ante.



- 3 See PARA 1234 post.
- 4 See PARA 1235 post.
- 5 See PARA 1236 post.
- 6 See PARA 1237 post.
- 7 See PARA 1238 post.
- 8 See PARA 1239 post.
- 9 See PARA 1240 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iv) Nature and Classification of Enactments/1234. Express and implied enactments.

### **1234. Express and implied enactments.**

Since legislation includes what is implied as well as what is expressed, the term 'enactment', in the sense of a statutory proposition, includes an implied proposition<sup>1</sup>.

1 'If ... the proposed addition is already necessarily contained, although not expressed, in the statute, it is of course not the less cogent because not expressed': *Gwynne v Burnell* (1840) 7 Cl & Fin 572 at 606, HL, per Coleridge J. In other words *verba relata inesse videntur* (words inferred are to be considered as incorporated): see *Prince v Nicholson* (1814) 5 Taunt 333 at 337; and cf Co Litt 359. An implication need not be necessary: it is enough if it is proper to draw it: *Chorlton v Lings* (1868) LR 4 CP 374 at 387 per Willes J. However an implication cannot properly be found which goes against an express statement: *expressum facit cessare tacitum* (statement ends implication). See further *Westminster Bank Ltd v Minister of Housing and Local Government* [1971] AC 508 at 529, [1970] 1 All ER 734 at 738, HL, per Lord Reid; and PARAS 1456 note 7, 1493 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iv) Nature and Classification of Enactments/1235. General and particular enactments.

### **1235. General and particular enactments.**

The distinction between a general enactment (dealing with a matter in broad terms) and a particular enactment (dealing with a matter in detail)<sup>1</sup> frequently arises as between a provision in a public general Act<sup>2</sup> and one dealing with the same subject matter in a local Act<sup>3</sup> or a personal Act<sup>4</sup>.

1 The distinction is recognised in the maxim *generalia specialibus non derogant* (general things do not derogate from special things): see PARA 1300 post.

2 As to such Acts see PARA 1210 ante.

3 As to such Acts see PARA 1213 ante.

4 As to such Acts see PARA 1214 ante. See further PARAS 1300-1301, 1486 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iv) Nature and Classification of Enactments/1236. Declaratory and amending enactments.

### **1236. Declaratory and amending enactments.**

Declaratory enactments either settle doubts on a particular point of law or restate the law on a particular topic, thus declaring the law without changing it, often using the phrase 'for the avoidance of doubt'; whereas an amending enactment effects a change in the law. Most modern enactments fall into the latter category.

In determining whether an enactment is declaratory or amending, regard must be had to its substance rather than its form; the mere use of words which, on their face, import that an enactment is declaratory does not render it so if its effect is in fact to amend the law<sup>1</sup>.

An enactment may declare the law by implication rather than expressly<sup>2</sup> when it is clear from the wording of an enactment that Parliament is proceeding on a certain view of the meaning and effect of a doubtful law. The process is known as statutory exposition<sup>3</sup>. It ought to be assumed that Parliament when legislating knew the existing state of the law<sup>4</sup>. A mere inference that Parliament has mistaken the nature or effect of some legal rule does not amount to a declaration that the rule is other than what it is<sup>5</sup>. Nevertheless the view taken by Parliament as to the legal meaning of a doubtful enactment may be treated as of persuasive, though not binding, authority<sup>6</sup>. If it is clear that an enactment proceeds on a truly erroneous view of the law, the court may be compelled to find that the enactment has misfired<sup>7</sup>, though it will reach this result with reluctance and only as a last resort<sup>8</sup>.

Since interpretation of legislation is a matter for the courts<sup>9</sup>, they are not bound by an expression of Parliament's opinion as to what the law is, whether expressed in or to be inferred from a statute, as distinct from a positive enactment manifesting an intention to declare the law<sup>10</sup>.

1 See *Harding v Queensland Stamp Comrs* [1898] AC 769 at 775, PC; *Lord Suffield v IRC* [1908] 1 KB 865 at 892, DC. In 1 BI Com (14th Edn) 86, the distinction is said to be between declaratory and remedial statutes, the purpose of remedial statutes being to 'supply defects and abridge superfluities' in the common law. However, since Blackstone's day the common law has been largely cast into statutory form, and any 'defects and superfluities' tend to be in the statute book rather than unenacted law.

For an example of an enactment declaring a constitutional law see the Northern Ireland Constitution Act 1973 s 1. For examples of enactments resolving doubts as to the common law see the Territorial Waters Jurisdiction Act 1878, overruling *R v Keyn* (1876) 2 Ex D 63, CCR; the Sexual Offences (Amendment) Act 1976 s 1(2) (now amended by the Criminal Justice and Public Order Act 1994 s 168(2), Sch 10 para 35(1), (2)), explaining *DPP v Morgan* [1976] AC 182, [1975] 2 All ER 347, HL. For examples of enactments explaining the provisions of previous enactments see the Laying of Documents before Parliament (Interpretation) Act 1948 (see PARA 1515 post); the Social Security Act 1980 s 4(6) (repealed) (explaining certain provisions of the Social Security (Miscellaneous Provisions) Act 1977 and the Social Security Pensions Act 1975). As to declaratory Acts the purpose of which is to restate the whole law on a particular subject see PARAS 1225 (consolidation Acts), 1226 (codifying Acts) ante. As to the construction of those types of declaratory enactment see PARAS 1417-1418 post. Declaratory enactments, in purporting to declare what the law already is, are prima facie retrospective in operation: see PARA 1283 post. Whether an enactment is declaratory is relevant to the question whether it creates an offence: see *Sales-Matic Ltd v Hinchcliffe* [1959] 3 All ER 401, [1959] 1 WLR 1005, DC.

2 As to implied enactments, whether declaratory or amending, see PARA 1234 ante.

3 See Jowitt, *Dictionary of English Law* (1st Edn, 1959) vol 2 p 1678, 'Statutory exposition'. However no change of meaning is to be taken as effected by the later Act unless this was intended: *Casanova v R, The Ricardo Schmidt* (1866) LR 1 QB 444 at 457; on appeal (1866) LR 1 PC 268 at 277.

4 *Young & Co v Royal Leamington Spa Corp* (1883) 8 App Cas 517 at 526, HL; *South Eastern Rly Co v Rly Comrs* (1880) 5 QBD 217 at 240; *Eastman Photographic Materials Co Ltd v Comptroller-General of Patents* [1898] AC 571 at 575, HL; *Welham v DPP* [1961] AC 103 at 122, 131, [1960] 1 All ER 805 at 807, 814, HL.

5 *Dore v Gray* (1788) 2 Term Rep 358 at 365; *IRC v Dowdall, O' Mahoney & Co Ltd* [1952] AC 401 at 417, 421, [1952] 1 All ER 531 at 539, 541, HL; *IRC v Butterley Co Ltd* [1955] Ch 453 at 484, [1955] 1 All ER 891 at 909, CA, per Jenkins LJ (affd [1957] AC 32, [1956] 2 All ER 197, HL).

6 *Cape Brandy Syndicate v IRC* [1921] 2 KB 403 at 414, CA; *Camille & Henry Dreyfus Foundation Inc v IRC* [1954] Ch 672 at 690, [1954] 2 All ER 466 at 475, CA (affd [1956] AC 39, [1955] 3 All ER 97, HL). Where Parliament passes an Act which on one (but not the other) of two disputed views of the existing law is unnecessary, this suggests that the other view is correct: *Murphy v Duke* [1985] QB 905, [1985] 2 All ER 274 (dissented from on doubtful grounds in *Cooper v Coles* [1987] QB 230, [1987] 1 All ER 91, DC).

7 *County of London (Devons Road, Poplar) Housing Confirmation Order 1945*, as reported in [1956] 1 All ER 818 at 820. See also *IRC v Ayrshire Employers Mutual Insurance Assocn Ltd* [1946] 1 All ER 637 at 641, HL; *IRC v Dowdall, O' Mahoney & Co Ltd* [1952] AC 401, [1952] 1 All ER 531, HL; *Birmingham Corp v West Midland Baptist (Trust) Assocn Inc* [1970] AC 874 at 898, [1969] 3 All ER 172 at 179, HL, per Lord Reid.

8 As to the duty of the court to carry an Act into effect see PARA 1346 post.

9 See PARA 1346 post.

10 *Cambridge University v Bryer* (1812) 16 East 317 at 326; *Re Direct West End and Croydon Rly Co, ex p Lloyd* (1851) 1 Sim NS 248 at 250; *R v Haughton Inhabitants* (1853) 22 LJMC 89 at 92, 94; *Earl of Shrewsbury v Scott* (1859) 6 CBNS 1 at 180-181; *Mersey Docks and Harbour Board v Cameron, Jones v Mersey Docks and Harbour Board* (1865) 11 HL Cas 443 at 518; *Mitcalfe v Hanson* (1866) LR 1 HL 242 at 250; *Mollwo, March & Co v Court of Wards* (1872) LR 4 PC 419 at 437; *Sewell v Burdick* (1884) 10 App Cas 74 at 105, HL; *Rookes v Barnard* [1964] AC 1129 at 1174, [1964] 1 All ER 367 at 378, HL, per Lord Reid, and at 1192-1193 and 389-390 per Lord Evershed; *Davies Jenkins & Co Ltd v Davies (Inspector of Taxes)* [1968] AC 1097, [1967] 1 All ER 913, HL.

## UPDATE

### 1236 Declaratory and amending enactments

NOTE 1--Northern Ireland Constitution Act 1973 s 1 repealed: Northern Ireland Act 1998 s 100(2), Sch 15. Sexual Offences (Amendment) Act 1976 s 1(2) repealed: Sexual Offences Act 2003 Sch 7.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iv) Nature and Classification of Enactments/1237. Substantive and procedural enactments.

### 1237. Substantive and procedural enactments.

A distinction is drawn between enactments that have substantive effect and those that are merely procedural. Here 'substantive' means having to do with the substance of the law, in particular the nature and existence of legal rights, powers or duties, whereas procedure is concerned with formalities and technicalities, rather than substance. A procedural change is expected to improve matters for everyone concerned (or at least to improve matters for some, without inflicting detriment on anyone else who uses ordinary care, vigilance and promptness)<sup>1</sup>.

The distinction governs such questions as whether a statutory requirement is mandatory or merely directory<sup>2</sup>, whether the effect of an enactment is retrospective<sup>3</sup> and when a limitation period begins to run<sup>4</sup>.

The question may be whether, on the facts of the instant case, the enactment is substantive or merely procedural, bearing in mind that an enactment may be substantive in the light of some facts but merely procedural on others<sup>5</sup>. Another use of the term 'substantive' is to indicate a 'permanent' provision of an Act, in contrast to merely temporary or transitional provisions<sup>6</sup>.

1 See *L'Office Cherifien des Phosphates v Yamashita-Shinnihon Steamship Co Ltd* [1994] 1 AC 486 at 495, [1993] 3 All ER 686 at 692-693, CA, per Sir Thomas Bingham MR (revsd without affecting this dictum [1994] 1 AC 486, [1994] 1 All ER 20, HL). The distinction between procedural and substantive provisions can be misleading 'since it leaves out of account the fact that some procedural rights are more valuable than some substantive rights'; sometimes it may be doubtful whether it is possible to assign the right in question unequivocally to one category rather than the other: see *L'Office Cherifien des Phosphates v Yamashita-Shinnihon Steamship Co Ltd* supra at 528 and 32, HL, per Lord Mustill.

2 See PARA 1238 post.

3 See PARA 1287 et seq post.

4 As to limitation periods see generally LIMITATION PERIODS. As to when enactments relating to evidence are procedural see *R v Cruttenden* [1991] 2 QB 66, [1991] 3 All ER 242, CA.

5 In *The Ydun* [1899] P 236, CA, the relevant enactment was regarded as merely procedural. However, as Lord Brightman pointed out in a later case (*Yew Bon Tew v Kenderaan Bas Mara* [1983] 1 AC 553 at 562-563, [1982] 3 All ER 833 at 838, PC), on slightly different facts the same enactment would have been treated as substantive.

6 Nourse J said in relation to the Development Land Tax Act 1976 s 45(4), (8) (repealed): 'One thing which is clear about [s 45](4) and (8) is that the former is a permanent provision and the latter is a transitional one... it would be very dangerous, in trying to get to the effect of the permanent provision, to attach too much weight to the particular wording of the transitional one' (*IRC v Metrolands (Property Finance) Ltd* [1981] 2 All ER 166 at 183, [1981] 1 WLR 637 at 649 (on appeal [1982] 2 All ER 557, [1982] 1 WLR 341, HL)). As to temporary Acts see PARA 1216 ante; and as to transitional provisions see PARA 1294 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iv) Nature and Classification of Enactments/1238. Mandatory and directory enactments.

### **1238. Mandatory and directory enactments.**

The distinction between mandatory and directory enactments concerns statutory requirements<sup>1</sup> and may have to be drawn where the consequence of failing to implement the requirement is not spelt out in the legislation<sup>2</sup>. The requirement may arise in one of two ways. A duty to implement it may be imposed directly on a person; or legislation may govern the doing of an act or the carrying on of an activity, and compel the person doing the act or carrying on the activity to implement the requirement as part of a specified procedure<sup>3</sup>. The requirement may be imposed merely by implication<sup>4</sup>.

To remedy the deficiency of the legislature in failing to specify the intended legal consequence of non-compliance with such a requirement, it has been necessary for the courts to devise rules. These lay down that it must be decided from the wording of the relevant enactment whether the requirement is intended to be mandatory or merely directory<sup>5</sup>. The same requirement may be mandatory as to some aspects and directory as to the rest<sup>6</sup>. The court will be more willing to hold that a statutory requirement is merely directory if any breach of the requirement is necessarily followed by an opportunity to exercise some judicial or official discretion in a way which can adequately compensate for that breach<sup>7</sup>. Provisions relating to the steps to be taken by the parties to legal proceedings (using the term in the widest sense) are often construed as mandatory<sup>8</sup>. Where, however, a requirement, even if in mandatory

terms, is purely procedural and is imposed for the benefit of one party alone, that party can waive the requirement<sup>9</sup>. Provisions requiring a public authority to comply with formalities in order to render a private individual liable to a levy have generally been held to be mandatory<sup>10</sup>.

Requirements are construed as directory if they relate to the performance of a public duty, and the case is such that to hold void acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, without at the same time promoting the main object of the legislature<sup>11</sup>. This is illustrated by many decisions relating to the performance of public functions out of time<sup>12</sup>, and by many relating to the failure of public officers to comply with formal requirements<sup>13</sup>. On the other hand, the view that provisions conferring private rights have been generally treated as mandatory<sup>14</sup> is less easy to support; the decisions on provisions of this type appear, in fact, to show no really marked leaning either way<sup>15</sup>.

If the requirement is found to be mandatory, then in a case where a duty to implement it is imposed directly on a person, non-compliance will normally constitute the tort of breach of statutory duty<sup>16</sup>, while in a case where it is to be implemented as part of a specified procedure, non-compliance will normally render the act done invalid<sup>17</sup>. If the requirement is found to be directory only then in either case the non-compliance will be without direct legal effect, though there might be indirect consequences such as an award of costs against the offender<sup>18</sup>. It has been said that mandatory provisions must be fulfilled exactly, whereas it is sufficient if directory provisions are substantially fulfilled<sup>19</sup>.

Where the requirement is complied with at the relevant time, the act done is not vitiated by later developments which, had they occurred before that time, would have meant that the duty should have been performed in a different way<sup>20</sup>.

1 For the meaning of 'statutory' see PARA 1205 note 2 ante. Terms used by the courts instead of 'mandatory' include 'absolute', 'obligatory', 'imperative' and 'strict'. In place of 'directory', the term 'permissive' is sometimes used. Use of 'directory' in the sense of permissive has been criticised (see Craies, *Statute Law* (7th Edn, 1971) p 61 note 74), but is now firmly rooted. Formerly there was judicial confusion on terminology. In *Howard v Bodington* (1877) 2 PD 203 at 210, the term 'mandatory' was used by Lord Penzance as synonymous with 'directory', and in *Liverpool Borough Bank v Turner* (1860) 2 De GF & J 502 at 507, the question was said by Lord Campbell LC to be whether a 'mandatory' provision was 'directory' or 'obligatory'. See also *Vita Food Products Inc v Unus Shipping Co* [1939] AC 277 at 289, [1939] 1 All ER 513 at 520-521, PC.

2 The difficulty in deciding whether a statutory requirement is mandatory or directory 'arises from the common practice of the legislature of stating that something 'shall' be done (which means that it 'must' be done) without stating what are to be the consequences if it is not done': *Petch v Gurney (Inspector of Taxes), Gurney (Inspector of Taxes) v Petch* [1994] 3 All ER 731 at 736, CA, per Millett LJ.

3 For the distinction between absolute statutory duties and statutory duties sub modo see PARA 1322 post. As to provisions requiring the use of a scheduled form, or a form substantially similar to it, see *Davison v Gill* (1800) 1 East 64; *Fredco Estates Ltd v Bryant* [1961] 1 All ER 34, [1961] 1 WLR 76, CA.

4 See eg *Stevens v Gourley* (1859) 29 LJCP 1; *Disher v Disher* [1965] P 31, [1963] 3 All ER 933, DC. Many mandatory requirements are not spelt out expressly, for example the requirement to observe natural justice: see eg *Ridge v Baldwin* [1964] AC 40, [1963] 2 All ER 66, HL. As to implied enactments see PARA 1234 ante.

5 There is no rule of thumb which gives the answer: see *Liverpool Borough Bank v Turner* (1860) 2 De GF & J at 507-508, 30 LJ Ch 379 at 380 per Lord Campbell CJ ('No universal rule can be laid down... It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed'). See eg *Lewis v Wolking Properties Ltd* [1978] 1 All ER 427, [1978] 1 WLR 403, CA, where it was held that a requirement which appeared to be in unqualified terms must be read subject to the other provisions of the County Court Rules. See also *Howard v Bodington* (1877) 2 PD 203 per Lord Penzance at 211. Cf *Montreal Street Rly Co v Normandin* [1917] AC 170 at 174, PC; *Salford Union (Guardians) v Dewhurst* [1926] AC 619 at 633, HL; *Secretary of State for Trade and Industry v Langridge* [1991] Ch 402, [1991] 3 All ER 591, CA.

6 Thus where a notice is required to be served at a particular time this may be treated as mandatory so far as concerns the need to serve the notice at *some* time, but directory as regards the precise time (see *Hughes (Inspector of Taxes) v Viner* [1985] 3 All ER 40; *Petch v Gurney (Inspector of Taxes), Gurney (Inspector of Taxes)*

*v Petch* [1994] 3 All ER 731, CA). See also *Pope v Clarke* [1953] 2 All ER 704, [1953] 1 WLR 1060, DC (provision requiring service of notice of intended prosecution, specifying nature, time and place of alleged offence, held mandatory except as respects the statement of time); *Howard v Secretary of State for the Environment* [1975] QB 235, [1974] 1 All ER 644, CA (provision requiring notice of appeal to be given within 14 days held mandatory, but a provision requiring the notice to specify grounds of the appeal held directory).

7 *Re T (a minor) (adoption: parental consent)* [1986] Fam 160, [1986] 1 All ER 817, CA; *Secretary of State for Trade and Industry v Langridge* [1991] 3 All ER 591, [1991] 3 All ER 591, CA.

8 See eg *Vaux v Vollans* (1833) 4 B & Ad 525 (action for a penalty barred by failure to adopt method of service prescribed for preliminary notice); *Noseworthy v Buckland-in-the-Moor Overseers* (1873) LR 9 CP 233 (hearing of objection to voter's qualification barred for a similar reason; but see note 17 infra); *Taylor v Taylor, Taylor v Keily, ex p Taylor* (1875) 1 ChD 426 at 431 (application to court for exercise of discretionary power invalid unless in prescribed form); *Barker v Palmer* (1881) 8 QBD 9 (no jurisdiction to entertain proceedings on summons delivered out of time); *Re Gifford and Bury Town Council* (1888) 20 QBD 368 (appointment of arbitrator bad for want of form); *Lockhart v St Albans Corp* (1888) 21 QBD 188, CA (application for case stated invalid for want of form); *Edwards v Roberts* [1891] 1 QB 302 (no jurisdiction to hear appeal by way of case stated where the appellant had disregarded a provision requiring notice of the appeal to be served on the respondent before the case was transmitted to the appeal court); *Hughes v Wavertree Local Board* (1894) 10 TLR 357 (application for case stated invalid if made out of time); *Hargreaves v Alderson* [1964] 2 QB 159, [1962] 3 All ER 1019, DC (requirement that a magistrates' court is not to proceed to the trial of an information that charges more than one offence held mandatory); *Devan Nair v Yong Kuan Teik* [1967] 2 AC 31, [1967] 2 All ER 34, PC (no jurisdiction to hear election petition served out of time); *Chapman v Earl* [1968] 2 All ER 1214, [1968] 1 WLR 1315, DC (no jurisdiction for a rent officer to deal with an application for the registration of rent where the tenant failed to specify the proposed rent in the application); *R v Pontypool Gaming Licensing Committee, ex p Risca Cinemas Ltd* [1970] 3 All ER 241, [1970] 1 WLR 1299, DC (requirement to send a copy of a newspaper advertising an application to a committee within seven days of publication held mandatory); *R v Leicester Gaming Licensing Committee, ex p Shine* [1971] 3 All ER 1082, [1971] 1 WLR 1648, CA; *Michael v Gowland* [1977] 2 All ER 328, [1977] 1 WLR 296, DC (requirement that an application to state a case be given within 14 days of the magistrates' court decision held mandatory). Cf *R v Lincolnshire Appeal Tribunal, ex p Stubbins* [1917] 1 KB 1, CA, where an appeal was held not to be barred by reason of the appellant's failure to follow the prescribed form in giving notice of appeal to the inferior tribunal; *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1971] AC 850, [1970] 2 All ER 871, HL, where a requirement to serve an application not less than two nor more than four months after a notice was served was held to be directory in the sense that it could be waived; *R v Inspector of Taxes, ex p Clarke* [1974] QB 220, [1972] 1 All ER 545, CA, where a provision that an appellant should express dissatisfaction with the commissioners' decision immediately before appealing further was held to be directory; *Lewis v Wolking Properties Ltd* [1978] 1 All ER 427, [1978] 1 WLR 403, CA, where a requirement that a summons should be served within the prescribed time was held to be directory; *Elsden v Pick* [1980] 3 All ER 235, [1980] 1 WLR 898, CA, where a provision that a notice to quit had to be not less than 12 months was held to be directory in the sense that it could be waived.

9 *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1971] AC 850 at 881, [1970] 2 All ER 871 at 893, HL, per Lord Diplock, and at 877 and 889 per Lord Pearson, distinguished in *Re 14 Grafton Street, London W1, De Havilland (Antiques) Ltd v Centrovincial Estates (Mayfair) Ltd* [1971] Ch 935, [1971] 2 All ER 1. Cf *R v Pontypool Gaming Licensing Committee, ex p Risca Cinemas Ltd* [1970] 3 All ER 241, [1970] 1 WLR 1299, DC; *R v Leicester Gaming Licensing Committee, ex p Shine* [1971] 3 All ER 1082, [1971] 1 WLR 1648, CA. As to waiver see further PARA 1364 post.

10 *Cullimore v Lyme Regis Corp* [1962] 1 QB 718, [1961] 3 All ER 1008, where a provision in a statutory scheme that the council would determine the amount of a levy within a certain time was held to be mandatory; *Agricultural, Horticultural and Forestry Industry Training Board v Kent* [1970] 2 QB 19, [1970] 1 All ER 304, CA, where a notice assessing a levy was held to be invalid because of failure to give an address for service for notice of appeal. See also *Bradbury v London Borough of Enfield* [1967] 3 All ER 434, [1967] 1 WLR 1311, CA. Cf *Coney v Choyce* [1975] 1 All ER 979, [1975] 1 WLR 422.

11 See eg *Montreal Street Rly Co v Normandin* [1917] AC 170 at 174, PC (fact that proper procedure not followed with respect to the revision of jury lists held not to affect the validity of verdicts given by juries selected from those lists).

12 See eg *R v Ingram* (1697) as reported in 1 Ld Raym 215 (justices to try rioters within one month; jurisdiction not confined to that period); *R v Sparrow* (1739) as reported in Sess Cas KB 177 (late appointment by justices of overseers of the poor held valid; explained in *R v Loxdale* (1758) 1 Burr 445 at 447); *R v Leicester Justices* (1827) 7 B & C 6 (failure to hold quarter sessions on prescribed date held not to invalidate proceedings); *R v Rochester Corp* (1857) 7 E & B 910 (affd (1858) EB & E 1024) (mandamus to compel revision of burgess roll out of time); *R v Ingall* (1876) 2 QBD 199 (delays in making, depositing, transmitting and approving a valuation list held not to invalidate it); *Caldow v Pixell* (1877) 2 CPD 562 (order by bishop for survey of dilapidations upheld although made more than the prescribed number of days after vacation of the benefice in question); *Hughes v Wavertree Local Board* (1894) 10 TLR 357 (jurisdiction to hear appeal by way of case

stated not affected by failure of court of first instance to state the case within the prescribed period). Cf *Bowman v Blyth* (1856) 7 E & B 26 (affd (1857) 7 E & B 47) (new table of fees prepared by justices held invalid because approved out of time); *Howard v Bodington* (1877) 2 PD 203 (duty of archbishop to direct inquiry into allegations of misconduct by incumbents; notice of allegations to be given to incumbent within a specified period of their being made, and before the giving of any direction; inquiry directed after giving of late notice held invalid). See also *R v London County Justices and London County Council* [1893] 2 QB 476, CA; *Cullimore v Lyme Regis Corpn* [1962] 1 QB 718, [1961] 3 All ER 1008.

13 See eg *Heath v Hubbard* (1803) 4 East 110 (transfer of ship not invalidated by failure of port officer to notify Commissioners of Customs); *Margate Pier Co v Hannam* (1819) 3 B & Ald 266 (acts of a justice valid notwithstanding failure to take prescribed oath); *Sussex Peerage Case* (1844) 11 Cl & Fin 85 at 148, HL (marriage not invalidated by failure to indorse consents on licence and register); *Middlesex Justices v R* (1884) 9 App Cas 757, HL (grant of superannuation allowance by Treasury valid although not made in prescribed form); *R v Lincolnshire Appeal Tribunal, ex p Stubbins* [1917] 1 KB 1, CA (jurisdiction to hear appeal not barred by failure of inferior tribunal to serve respondent with copy of appellant's notice of intention to appeal); *Re Philpot* [1960] 1 All ER 165, sub nom *R v Parkhurst Prison Governor, ex p Philpot* [1960] 1 WLR 115, DC (sentence of preventive detention valid despite court's failure to give to accused a copy of the Prison Commissioners' report taken into account in deciding sentence). Cf *R v Pinder, Re Greenwood* (1855) 24 LJQB 148 (certificate for reception of 'lunatic' invalid for want of form); *Wing v Epsom UDC* [1904] 1 KB 798, DC (justices' order invalid for want of second signature); *R v Pigg* [1982] 2 All ER 591, [1982] 1 WLR 762, CA (majority verdict void where foreman failed to state in open court the number of dissenting jurors).

14 See *Caldow v Pixell* (1877) 2 CPD 562 at 566.

15 Decisions in which provisions conferring private rights have been held to be mandatory include many of those cited in note 8 supra. See also *Brooks v Cock* (1835) 3 Ad & El 138; *Frend v Dennett* (1858) 4 CBNS 576 (followed in *Hunt v Wimbledon Local Board* (1878) 4 CPD 48, CA; *Young & Co v Royal Leamington Spa Corpn* (1883) 8 App Cas 517, HL); *Spice v Bacon* (1877) 2 Ex D 463, CA; *Edward Ramia Ltd v African Woods Ltd* [1960] 1 All ER 627, [1960] 1 WLR 86, PC. Cf *Walter v Rumbal* (1695) 1 Ld Raym 53 (followed in *Jarvis v Hemmings* [1912] 1 Ch 462); *Cole v Green* (1843) 6 Man & G 872; *Earl of Mountcashell v Viscount O' Neill* (1856) 5 HL Cas 937; *Woodward v Sarsons* (1875) LR 10 CP 733 (followed in *Phillips v Goff* (1886) 17 QBD 805, DC). See also *Levers v Morris* [1972] 1 QB 221, [1971] 3 All ER 1300, DC; *Morgan v Simpson* [1975] QB 151, [1974] 3 All ER 722, CA.

16 See PARA 1360 post.

17 See eg *R v Phillips* [1939] 1 KB 63, CA; and see *R v Cambridge* [1994] 2 All ER 760, [1994] 1 WLR 971, CA; *R v Rossiter* [1994] 2 All ER 752, CA (cases where judge did not observe requirement that jury should consider defence of provocation). Even where the duty is mandatory, the court will not nowadays hold it to be contravened because of a purely formal or technical defect. This may be described as a defect that does not materially impair the remedy intended to be provided by the enactment for the mischief to which it is directed: *Munnich v Godstone RDC* [1966] 1 All ER 930, [1966] 1 WLR 427, CA; *Secretary of State for Trade and Industry v Langridge* [1991] Ch 402 at 415, [1991] 3 All ER 591 at 599, CA. As to construction by reference to the mischief see PARA 1474 post. This development means that some decisions of the past would not be followed today: see eg *Noseworthy v Overseers of Buckland-in-the-Moor* (1873) LR 9 CP 233 (cited in note 8 supra).

18 See eg *Bellamy v Sale* (1862) 7 LT 269; *Vita Food Products Inc v Unus Shipping Co Ltd* [1939] AC 277, [1939] 1 All ER 513, PC.

19 See eg *Woodward v Sarsons* (1875) LR 10 CP 733 at 746; *Phillips v Goff* (1886) 17 QBD 805 at 812, DC; *R v Croydon Justices, ex p Lefore Holdings Ltd* [1981] 1 All ER 520, [1980] 1 WLR 1465, CA.

20 See eg *Chelmsford RDC v Powell* [1963] 1 All ER 150, [1963] 1 WLR 123, DC.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iv) Nature and Classification of Enactments/1239. Civil and criminal enactments.

### 1239. Civil and criminal enactments.

A distinction is drawn between enactments which form part of the criminal law and the remainder, which in this context may be called civil enactments. This is because the applicable

interpretative criteria are in some respects different<sup>1</sup>, as are rules relating to onus and standard of proof<sup>2</sup>. A comparable distinction is that between penal and non-penal enactments<sup>3</sup>.

1 As to the interpretative criteria see PARA 1380 et seq post.

2 See CIVIL PROCEDURE vol 11 (2009) PARA 769 et seq; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1368 et seq. For other cases in which the question whether an enactment is civil or criminal is material see CIVIL PROCEDURE vol 12 (2009) PARA 1705.

3 See PARA 1240 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(2) DEFINITION AND CLASSIFICATION/(iv) Nature and Classification of Enactments/1240. Penal and non-penal enactments.

#### **1240. Penal and non-penal enactments.**

A distinction is drawn between enactments which are penal in effect and the remainder, which may be called non-penal enactments<sup>1</sup>. A comparable distinction is that between civil and criminal enactments<sup>2</sup>.

It was formerly held that a statute must be regarded as 'penal' if, but only if, it imposes a fine, penalty or forfeiture<sup>3</sup>, other than a penalty which has the nature of (1) liquidated damages<sup>4</sup>; or (2) other civil remedy<sup>5</sup>. However the true test is now considered to be whether a particular construction inflicts a detriment, or greater detriment, on persons affected. A law that inflicts hardship or deprivation of any kind on a person is in essence penal. There are degrees of penalisation, but the concept of detriment inflicted through the state's coercive power pervades them all. The substance, not the form, of the penalty is what matters. The law is concerned that a person should not be put in peril of any kind upon an ambiguity<sup>6</sup>; hence the principle against doubtful penalisation<sup>7</sup>.

1 A former distinction was between penal statutes, providing for the punishment of offences, and 'remedial' statutes, granting relief to persons aggrieved: *Lord Huntingtower v Gardiner* (1823) 1 B & C 297 at 299 per Bayley J. It was, however, realised that a particular provision might be penal viewed from one aspect and remedial viewed from another: see 1 BI Com (14th Edn) 88, cited in *Gorton v Champneys* (1823) 1 Bing 287 at 301 per Park J.

2 See PARA 1239 ante.

3 *Mellor v Denham* (1880) 5 QBD 467, CA; *R v Whitchurch* (1881) 7 QBD 534, CA; *R v Paget* (1881) 8 QBD 151 at 157, DC, per Field J; *Ex p Schofield* [1891] 2 QB 428; *Derby Corp v Derbyshire County Council* [1897] AC 550 at 552, HL.

4 *Reeve v Gibson* [1891] 1 QB 652, CA.

5 *Saunders v Wiel* [1892] 2 QB 321, CA; *Thomson v Lord Clanmorris* [1900] 1 Ch 718 at 725, CA, per Lindley MR. See also *Huntington v Attrill* [1893] AC 150, PC. Cf *R v Vine* (1875) LR 10 QB 195, where a statute disqualifying a person convicted of a felony from holding a publican's licence was held to be not so much punitive as intended for the protection of the public.

6 See *Tuck & Sons v Priester* (1887) 19 QBD 629 at 638, CA.

7 As to this interpretative criterion see PARA 1456 post. For other cases in which the question whether an enactment is penal is material see CIVIL PROCEDURE vol 12 (2009) PARA 1705.



Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(3) ENACTING, PROMULGATION, PROOF AND CITATION OF ACTS/(i) Enacting by the Queen in Parliament/1241. Parliamentary Bills.

### **(3) ENACTING, PROMULGATION, PROOF AND CITATION OF ACTS**

#### **(i) Enacting by the Queen in Parliament**

##### **1241. Parliamentary Bills.**

Every Act of Parliament originates in a Bill which, in the case of a public Bill or a hybrid Bill, is presented to one or other House of Parliament by one of its members and, in the case of a private Bill, is laid before Parliament upon a petition presented by its promoters<sup>1</sup>.

1 For the distinction between public and private Bills see PARA 1212 ante. As to the meaning of 'hybrid Bill' see PARA 1212 text and note 2 ante. Legislation by Bill developed in the latter part of the fifteenth century and no other method was employed after 1492. Before that time, statutes were in general drafted by the judges to give effect to petitions assented to by the Crown. See further PARA 1248 note 1 post; and 1 Clifford's History of Private Bill Legislation (1885 Edn) 323.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(3) ENACTING, PROMULGATION, PROOF AND CITATION OF ACTS/(i) Enacting by the Queen in Parliament/1242. Initiation of Bills by government departments.

##### **1242. Initiation of Bills by government departments.**

It is one of the primary functions of the executive to initiate legislation<sup>1</sup>. This may be done directly, by the preparation of a Bill in a government department and its subsequent introduction by a minister of the Crown either in the House of Commons or the House of Lords<sup>2</sup>; or it may be done indirectly, where a Bill so prepared is entrusted to a private member who is a government supporter, for introduction by him or her as a private member's Bill. Where a government Bill impinges on private interests it may fall to be characterised as a hybrid Bill<sup>3</sup>. Public Bills are usually drafted in the Parliamentary Counsel Office<sup>4</sup>. In relation to the legislation it promotes, a government issues guidance as to meaning and intention in various forms<sup>5</sup>. Much government legislation takes the form of subordinate legislation, whether in the form of Orders in Council or other instruments made under the royal prerogative<sup>6</sup> or, more usually, in the form of delegated legislation<sup>7</sup>.

1 For the meaning of 'the executive' see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 16. See also PARA 1325 et seq post.

2 As to the enacting process see PARA 1245 post.

3 See PARA 1212 ante.

4 As to public Bills see PARA 1212 ante. In ascertaining the legal meaning of an enactment it is necessary first to determine whether the drafting is precise or imprecise, since the technique of interpretation applied to any enactment can only be as exact as the method of drafting permits. For the meaning of 'enactment' see PARA 1232 ante. Modern British Acts are drafted with precision, the drafter aiming to use language accurately and consistently. As to the need for precision see *Re Castioni* [1891] 1 QB 149 at 167, DC, per Stephen J; *Luke v IRC*

[1963] AC 557 at 577, [1963] 1 All ER 655 at 664, HL, per Lord Reid; *Wills v Bowley* [1983] 1 AC 57 at 104, [1982] 2 All ER 654 at 682, HL, per Lord Bridge. As to the drafting of legislation see PARLIAMENT vol 34 (Reissue) PARA 732 et seq; and see Bennion, *Statute Law* (3rd Edn, 1990), Ch 2. Older Acts are frequently the subject of more disorganised composition, where the text may be the product of many hands and the language is often confused and inconsistent. Private Acts (see PARA 1211 ante) and delegated legislation (see PARA 1501 et seq post) are usually drafted with less precision than public general Acts (see PARA 1210 ante). Rules, byelaws and similar provisions may be drafted with even less precision. The Office of the Parliamentary Counsel was constituted by a Treasury Minute dated 8 February 1869. By this a single government department came to be responsible for the drafting of all government Bills not solely relating to Scotland or Ireland: see PARLIAMENT vol 34 (Reissue) PARA 732.

- 5 As to the use of such guidance in statutory interpretation see PARAS 1424-1425 post.
- 6 See PARA 1500 post.
- 7 See PARA 1501 et seq post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(3) ENACTING, PROMULGATION, PROOF AND CITATION OF ACTS/(i) Enacting by the Queen in Parliament/1243. Initiation of legislation by other official agencies.

### **1243. Initiation of legislation by other official agencies.**

As well as being initiated by the government<sup>1</sup>, legislation may be initiated by other official agencies such as the Law Commission<sup>2</sup>. In all cases, however, a government department will be in charge of the promotion of the Bill in its passage through Parliament and of the administration of the resulting Act<sup>3</sup>.

- 1 See PARA 1242 ante.
- 2 As to the initiation of Bills by the Law Commission see PARA 1244 post.
- 3 As to the enacting process see PARA 1245 post. As to the enforcement and administration of legislation see PARA 1325 et seq post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(3) ENACTING, PROMULGATION, PROOF AND CITATION OF ACTS/(i) Enacting by the Queen in Parliament/1244. Initiation of Bills by Law Commission.

### **1244. Initiation of Bills by Law Commission.**

Most law reform Bills<sup>1</sup> are initiated by the Law Commission, though drafted by members of the Parliamentary Counsel Office on secondment<sup>2</sup>. It is the duty of the Law Commission to take and keep under review the law with which it is concerned<sup>3</sup> with a view to its systematic development and reform<sup>4</sup>. For that purpose it is the commission's duty to:

- (1) prepare and consider any proposals for the reform of the law which may be made or referred to the commission<sup>5</sup>;
- (2) prepare and submit to the Lord Chancellor from time to time programmes for the examination of different branches of the law with a view to reform, including

recommendations as to the agency by which any such examination should be carried out<sup>6</sup>;

(3) undertake, pursuant to any such recommendations approved by the Lord Chancellor, the examination of particular branches of the law and the formulation, by means of draft Bills or otherwise, of proposals for reform therein<sup>7</sup>;

(4) prepare from time to time at the request of the Lord Chancellor comprehensive programmes of consolidation and statute law revision, and to undertake the preparation of draft Bills pursuant to any such programme approved by him<sup>8</sup>;

(5) provide advice and information to government departments and other authorities or bodies concerned at the instance of the government with proposals for the reform or amendment of any branch of the law<sup>9</sup>;

(6) obtain such information as to the legal systems of other countries as appears to the commissioners likely to facilitate the performance of any of their functions<sup>10</sup>.

The Lord Chancellor must lay before Parliament any programmes prepared by the commission and approved by him and any proposals for reform formulated by the commission pursuant to such programmes<sup>11</sup>. The commission must make an annual report to him on its proceedings, and he must lay the report before Parliament with such comments, if any, as he thinks fit<sup>12</sup>.

1 As to law reform Bills see PARA 1224 et seq ante.

2 The Law Commission was established under the Law Commissions Act 1965 s 1 (as amended); and the Scottish Law Commission was established under s 2. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Parliamentary Counsel Office see PARA 1242 note 4 ante.

3 In the case of the Law Commission, this does not include the law of Scotland or any law of Northern Ireland which the Parliament of Northern Ireland would have had power to amend if the Northern Ireland Constitution Act had not been passed: Law Commissions Act 1965 s 1(5); Northern Ireland Constitution Act 1973 s 40(2).

4 Law Commissions Act 1965 s 3(1). This is to include, in particular, codification (as to which see PARA 1226 ante), the elimination of anomalies, the repeal of obsolete and unnecessary enactments and the reduction of the number of separate enactments and generally the simplification and modernisation of the law: s 3(1).

5 Ibid s 3(1)(a).

6 Ibid ss s 3(1)(b), 6(2). The commission may recommend that the examination in question be carried out by a body other than the commission: s 3(1)(b).

7 Ibid ss 3(1)(c), 6(2). In addition to those formulated in the context of a law reform programme prepared under s 3(1)(b) (see head (2) in the text), law reform proposals are commonly made by the commission in response to a reference by the Lord Chancellor of a particular point or points for their advice under s 3(1)(e) (see head (5) in the text).

8 Ibid ss 3(1)(d), 6(2). As to consolidation Bills, including those embodying Law Commission amendments see PARA 1225 ante: as to the Law Commission's role in codification see PARA 1226 ante; and as to statute law revision see PARA 1227 ante.

9 Ibid s 3(1)(e).

10 Ibid s 3(1)(f). In the exercise of its functions under the Law Commissions Act 1965, the Law Commission must act in consultation with the Scottish Law Commission: see s 3(4).

11 Ibid ss 3(2), 6(2). As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

12 Ibid ss 3(3), 6(2).

## UPDATE

## 1244 Initiation of Bills by Law Commission

TEXT AND NOTES--As to reports on the implementation of Law Commission proposals and a protocol about the Commission's work see Law Commissions Act 1965 ss 3A, 3B (added by Law Commission Act 2009 ss 1, 2); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 957.

NOTE 3--Northern Ireland Constitution Act 1973 s 40 repealed: Northern Ireland Act 1998 s 100(2), Sch 15.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(3) ENACTING, PROMULGATION, PROOF AND CITATION OF ACTS/(i) Enacting by the Queen in Parliament/1245. Enactment procedure.

## 1245. Enactment procedure.

For a Bill to acquire the force of law, except in the case of a Bill to which the Parliament Acts 1911 and 1949<sup>1</sup> apply, it must be agreed to by both Houses and must then receive the royal assent<sup>2</sup>. Proceedings on Bills are governed by the rules of each House and a Bill must normally pass through all its stages in both Houses in one session of Parliament<sup>3</sup>. In the case of private Bills, however, Parliament sometimes authorises the carrying over of proceedings from one session to the next<sup>4</sup>. A session may (rarely) begin and end in the same regnal year, or (more commonly) begin in one regnal year and end in another<sup>5</sup>. Very rarely, there have been two sessions held entirely within the same regnal year<sup>6</sup>.

1 See PARA 1246 post.

2 As to the necessity for the concurrence of all three estates at common law see PARA 1202 ante. As to the recital of the consents in the enacting formula see PARA 1273 post. Many early documents have, however, been received as statutes notwithstanding that the consents are not recited: see PARA 1205 ante. As to royal assent procedure see the Royal Assent Act 1967; PARLIAMENT vol 34 (Reissue) PARAS 833-835; and Bennion, *Statutory Interpretation* (2nd Edn, 1992) ss 37-42.

3 For details of the stages see PARLIAMENT vol 34 (Reissue) PARA 736 et seq (public Bills, including hybrid Bills), 1317 (private Bills). See also Bennion, *Statutory Interpretation* (2nd Edn, 1992) s 36.

4 The same procedure has also been adopted in relation to hybrid Bills. As to both private Bills and hybrid Bills see PARA 1212 ante.

5 A regnal year (or year of the reign), a term rarely needing to be used in modern times, is a period of 12 months beginning on, or on the anniversary of, the date of the Monarch's accession. Thus the Summary Jurisdiction Act 1848 (repealed), commonly known as 'Jervis's Act', was referred to as 'An Act of the session of the eleventh and twelfth years of the reign of Her present Majesty Queen Victoria'. Here the regnal years in question may be more briefly denoted as '11 & 12 Vict'. Queen Elizabeth II acceded to the throne on 6 February 1952. Accordingly each regnal year of Her reign begins on 6 February and ends on the following 5 February.

6 See eg the regnal years 13 Ric 2 and 47 Geo 3. Here the early practice was to characterise collectively the Acts of the first session as 'Stat 1' and those of the second as 'Stat 2' because the entire legislative output of a session was then regarded as one 'statute' (see PARA 1205 text and note 3 ante): see eg 13 Ric 2 stat 1 c 2 (repealed). Later practice has in such cases adopted an alternative formula using 'sess 1' and 'sess 2': see eg 47 Geo 3 sess 2 c 36 (repealed).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(3) ENACTING, PROMULGATION, PROOF AND CITATION OF ACTS/(i) Enacting by the Queen in Parliament/1246. Enactment under the Parliament Acts.

### **1246. Enactment under the Parliament Acts.**

By virtue of the Parliament Acts 1911 and 1949<sup>1</sup>, public Bills<sup>2</sup>, with certain exceptions<sup>3</sup>, are capable of becoming Acts notwithstanding that they have not been agreed to by the House of Lords.

In the case of a certified money Bill which has been passed by the House of Commons and sent up to the House of Lords at least one month before the end of the session, if the Lords have not passed it without amendment within one month, it must be submitted for royal assent, unless the House of Commons orders the contrary<sup>4</sup>.

Any other public Bill to which the Parliament Acts 1911 and 1949 apply must, in the absence of such a contrary order, be submitted for royal assent if it has been passed by the Commons and rejected by the Lords in two successive sessions, whether or not of the same Parliament, so long as (1) one year at least has elapsed between its second reading in the Commons in the first session and its passing by the Commons in the second session; and (2) it was sent up to the House of Lords at least one month before the end of each session<sup>5</sup>.

1      Ie the Parliament Act 1911 and the Parliament Act 1949.

2      For the meaning of 'public Bill' see PARA 1212 ante.

3      The exceptions are (1) a Bill for extending the maximum duration of Parliament beyond five years; and (2) a Bill for the confirmation of a provisional order: Parliament Act 1911 ss 2(1), 5.

4      See *ibid* s 1 (amended by the National Loans Act 1968 s 1(5)). A contrary order was, eg, given in the case of the Bill for the Parliamentary and other Pensions and Salaries Act 1976 (now largely repealed): 232 Commons Journal 542. For the meaning of 'money Bill' see the Parliament Act 1911 s 1(2) (as so amended); and as to certification see s 1(3). See further PARLIAMENT vol 78 (2010) PARA 827.

5      See the Parliament Act 1911 s 2 (amended by the Parliament Act 1949 s 1); and PARLIAMENT vol 78 (2010) PARA 827 (money Bills), 831 (other Bills). As to the appropriate enacting formula see PARA 1273 post. Three Bills (including that for the Act of 1949) were passed under the Parliament Act 1911 s 2 as originally enacted. Subsequently, only the Bill for the War Crimes Act 1991 has been passed under the Parliament Acts 1911 and 1949 combined.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(3) ENACTING, PROMULGATION, PROOF AND CITATION OF ACTS/(i) Enacting by the Queen in Parliament/1247. Procedure for making corrections and minor improvements.

### **1247. Procedure for making corrections and minor improvements.**

If at any time it appears to the Lord Chancellor to be expedient that a Bill should be prepared for the purpose of consolidating the enactments relating to any subject but that, in order to facilitate the consolidation of those enactments, corrections and minor improvements<sup>1</sup> ought to be made in them, he may cause to be laid before Parliament a memorandum proposing such corrections and minor improvements in them as he thinks to be expedient<sup>2</sup>. A notice specifying the place where copies of the memorandum may be obtained must be published in the

Gazette<sup>3</sup> before any such memorandum is laid before Parliament, as must the address to which, and the time within which, representations in writing with respect to it may be made<sup>4</sup>.

If, at or after the time when any such memorandum is so laid, a Bill to consolidate the enactments to which the memorandum relates with such corrections and minor improvements as may be authorised under these provisions is presented to either House of Parliament, and the Bill and the memorandum are referred to a joint committee of both Houses, any representations made with respect to the memorandum in accordance with the provisions of the notice published in the Gazette must also be referred to the joint committee; and that committee, after considering any such representations, must, before reporting the Bill, inform the Lord Chancellor and the Speaker of the House of Commons what corrections and minor improvements in those enactments the committee is prepared to approve<sup>5</sup>. If the joint committee approves the proposals contained in the memorandum, with or without alterations, and the Lord Chancellor and the Speaker inform the committee that they concur in such approval, the committee, after making in the Bill such amendments, if any, as may be necessary to give effect to any alterations made in the proposals, may, in reporting the Bill, report that the Bill, or the Bill as amended by the committee, re-enacts the existing law with such corrections and minor improvements only as have been duly approved by the committee with the concurrence of the Lord Chancellor and of the Speaker<sup>6</sup>. If the corrections and minor improvements approved by the joint committee with that concurrence differ in any respect from those proposed in the memorandum laid before Parliament, they must be appended to the report of the joint committee<sup>7</sup>.

When a Bill has been reported by the joint committee with a report that it re-enacts the existing law with such corrections and minor improvements only as have been duly approved under these provisions, then for the purposes of any further proceedings in Parliament relating to the Bill, but not for any other purpose, the corrections and minor improvements approved by the joint committee with the concurrence of the Lord Chancellor and of the Speaker are deemed to have become law in like manner as if they had been made by an Act<sup>8</sup>.

The procedure described above is no longer used in practice.

1 For these purposes, 'corrections and minor improvements' means amendments of which the effect is confined to resolving ambiguities, removing doubts, bringing obsolete provisions into conformity with modern practice, or removing unnecessary provisions or anomalies which are not of substantial importance, and amendments designed to facilitate improvement in the form or manner in which the law is stated, and includes any transitional provisions which may be necessary in consequence of such amendments: Consolidation of Enactments (Procedure) Act 1949 s 2. As to the laying of documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

2 Ibid s 1(1). As to consolidation Acts see PARA 1225 ante.

3 For these purposes, 'the Gazette' means the London Gazette and, in relation to a memorandum preparatory to a Bill intended to extend to Scotland or Northern Ireland, includes the Edinburgh Gazette or Belfast Gazette, as the case may be, so, however, that, in relation to a memorandum preparatory to a Bill intended to extend only to Scotland, it means the Edinburgh Gazette: *ibid* s 2.

4 Ibid s 1(2).

5 Ibid s 1(3). The committee may not, however, consider any such memorandum until at least one month after it has been laid before Parliament: s 1(3) proviso.

6 Ibid s 1(4). The joint committee may not approve any corrections and minor improvements, and neither the Lord Chancellor nor the Speaker may concur in approving any corrections and minor improvements under these provisions unless it or he is satisfied that they do not effect any changes in the existing law of such importance that they ought, in its or his opinion, to be separately enacted by Parliament: s 1(5).

7 Ibid s 1(6).

8 Ibid s 1(7).

**UPDATE****1247 Procedure for making corrections and minor improvements**

TEXT AND NOTE 5--For 'the Lord Chancellor and the Speaker of the House of Commons' now read 'the Speaker of the House of Commons and the Speaker of the House of Lords': 1949 Act s 1(3) (amended by the Constitutional Reform Act 2005 Sch 6 para 6(2)).

TEXT AND NOTE 6--For 'the Lord Chancellor and the Speaker' now read 'the Speaker of the House of Commons and the Speaker of the House of Lords', and for 'of the Lord Chancellor and of the Speaker' now read 'of the Speaker of the House of Commons and the Speaker of the House of Lords': 1949 Act s 1(4) (amended by the 2005 Act Sch 6 para 6(3)). For 'the Lord Chancellor nor the Speaker' now read 'the Speaker of the House of Commons nor the Speaker for the House of Lords': 1949 Act s 1(5) (amended by the 2005 Act Sch 6 para 6(4)).

NOTE 7--1949 Act s 1(6) amended: 2005 Act Sch 6 para 6(5).

TEXT AND NOTE 8--For 'of the Lord Chancellor and of the Speaker' now read 'of the Speaker of the House of Commons and the Speaker of the House of Lords': 1949 Act s 1(7) (amended by the 2005 Act Sch 6 para 6(5)).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(3) ENACTING, PROMULGATION, PROOF AND CITATION OF ACTS/(ii) Printing and Publication of Acts/1248. Original texts of Acts.

**(ii) Printing and Publication of Acts****1248. Original texts of Acts.**

The original texts of statutes enacted between 1278 and 1468 are to be found in the statute rolls preserved in the Public Record Office, whilst those of statutes passed since 1496 are in the custody of the Clerk of the Parliaments<sup>1</sup>. Between 1483 and 1849 many statutes were also enrolled in Chancery<sup>2</sup>. Until 1849<sup>3</sup> the practice was for the officials of whichever House of Parliament had first passed the Bill to engross the text of the statute, with the amendments incorporated during its passage through the other House, on a roll of parchment<sup>4</sup>, and this was the copy which the Clerk of the Parliaments retained. The current practice for public Acts<sup>5</sup> is for two copies of the text of the Act to be prepared on vellum which are then signed by the Clerk of the Parliaments. He retains the first copy and the second copy is sent to the Public Record Office. In the case of Measures, a third vellum copy is prepared which is sent to the General Synod of the Church of England<sup>6</sup>.

1 The first period corresponds roughly to that during which statutes were drafted by the judges, the second to that during which legislation has been by Bill: see PARA 1241 note 1 ante. It is thought, however, that a number of statutes were drafted by the judges between 1468 and 1492, although no statute roll exists for that period; equally, some statutes originated in Bills before 1492 and all statutes did so after that date, but the original texts of such statutes passed before 1497 are not extant.

2 The copies of them, made up and certified by the Clerk of the Parliaments, were delivered into Chancery for safe keeping. Public Bills were enrolled and, when they made their appearance in the eighteenth century, so were statutes which had originated in private Bills but were declared public. The practice in relation to other

statutes originating in private Bills varied from time to time, but they ultimately ceased to be enrolled. The Chancery enrolments are preserved in the Public Record Office.

3 The relevant date was 1850 for statutes originating in private Bills.

4 The rolls in question constitute collectively the Parliament Roll for the period. During the period between 1278 and 1468, the Parliament Roll recorded the petitions, and answers to petitions, to which the judge's drafts were intended to give effect.

5 As to the practice for private Acts see PARLIAMENT vol 34 (Reissue) PARA 906.

6 As to General Synod Measures see PARA 1205 note 5 ante. For a more detailed discussion of original texts of statutes see Bennion, *Statutory Interpretation* (2nd Edn, 1992) s 45.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(3) ENACTING, PROMULGATION, PROOF AND CITATION OF ACTS/(ii) Printing and Publication of Acts/1249. Queen's Printer of Acts of Parliament.

### **1249. Queen's Printer of Acts of Parliament.**

The sole right of printing Acts of Parliament is vested in the Crown<sup>1</sup>. Since 1886 the practice has been for letters patent to be issued to the Controller of Her Majesty's Stationery Office constituting the controller ex officio Queen's Printer of Acts of Parliament. Prints of every public general Act are published by the Queen's Printer as soon as possible after the giving of royal assent<sup>2</sup>.

1 See COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 5.

2 See PARA 1250 post. As to the classification of Acts adopted by the Queen's Printer see PARA 1207 ante. As to the settling of the text see Bennion, *Statutory Interpretation* (2nd Edn, 1992) s 45. As to proof of statutes see CIVIL PROCEDURE vol 11 (2009) PARA 889. As to copyright in Acts of Parliament see PARA 1206 ante.

## **UPDATE**

### **1249 Queen's Printer of Acts of Parliament**

NOTE 2--For an example of letters patent appointing the Queen's Printer see London Gazette, 4 September 1997.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(3) ENACTING, PROMULGATION, PROOF AND CITATION OF ACTS/(ii) Printing and Publication of Acts/1250. Annual volumes of public general Acts.

### **1250. Annual volumes of public general Acts.**

Volumes are published by the Queen's Printer for each calendar year containing the text of all the public general Acts of that year, together with alphabetical and chronological tables of their short titles<sup>1</sup> and an index<sup>2</sup>. A separate volume is published containing the text of the local and personal Acts which have received the royal assent during the year<sup>3</sup>.



1 As to short titles see PARA 1268 post. As to the inclusion of General Synod Measures and (before the Synodical Government Measure 1969) Church Assembly Measures in the annual volumes see PARA 1205 note 5 ante.

2 Since 1976 a separate volume has been published for each year consisting of tables relating to the statutory provisions enacted in that year, including a table showing their effect on existing legislation and tables of derivations and destinations for the year's consolidation Acts.

3 As to the distinction between public general Acts, local Acts and personal Acts see PARA 1210 et seq ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(3) ENACTING, PROMULGATION, PROOF AND CITATION OF ACTS/(ii) Printing and Publication of Acts/1251. Functions of the Lord Chancellor as to statutory publications.

### **1251. Functions of the Lord Chancellor as to statutory publications.**

Ultimate responsibility for the publication of legislation rests with the Lord Chancellor, acting on behalf of the Crown. He is assisted by the advisory committee on statute law<sup>1</sup>. Thus assisted, he is responsible for supervising the publication of Acts and revised editions of Acts<sup>2</sup> and the Chronological Table of the Statutes, the Index to the Statutes and Indexes to Local and Personal Acts<sup>3</sup>.

Revised editions of the public general Acts<sup>4</sup> contain only those enactments which are for the time being in force<sup>5</sup>. The Chronological Table and the Index to the Statutes, both of which are published annually, are principally concerned with public general Acts<sup>6</sup> although Measures are also included<sup>7</sup>.

The Chronological Table gives the calendar year, chapter number and short title or general subject of all such Acts and Measures from 1235 onwards<sup>8</sup> and indicates in relation to each one every subsequent enactment by which its operation has been amended, extended, restricted or otherwise affected<sup>9</sup>.

The Index to the Statutes digests the Acts in force at the time of its publication according to their general subject matter. An Index to the Local and Personal Acts is published for each calendar year and a consolidated version is published from time to time<sup>10</sup>.

Under the Lord Chancellor, the Statutory Publications Office (SPO) is charged with the function of making available to government departments and other official bodies, and indeed the public generally, the legislation operating within Great Britain<sup>11</sup>.

The Lord Chancellor is also responsible for administering the promulgation list<sup>12</sup>.

1 The advisory committee on statute law was set up in 1991 to replace two bodies, the Statute Law Committee established by Lord Cairns LC in 1868 and the editorial board of *Statutes in Force*. It consists of the Lord Chancellor as chairman (with his permanent secretary as alternate) together with the Clerk of the Parliaments, the Clerk of the House of Commons, the Chairman of the Law Commission, the Chairman of the Scottish Law Commission, the First Parliamentary Counsel, the Legal Secretary to the Lord Advocate and First Scottish Parliamentary Counsel, the First Legislative Counsel for Northern Ireland, the Treasury Solicitor, the Solicitor to the Scottish Office and representatives from Her Majesty's Stationery Office and the Lord Chancellor's Department (see 529 HL Official Report (5th series) written answers cols 65-66).

2 As to the importance of revised editions see PARA 1255 post.

3 As to publications relating to subordinate legislation see PARAS 1508-1509 post.

4 A revised edition of the statutes will incorporate any amendments authorised by statute to be made in such an edition: see eg the Representation of the People Act 1969 s 26(5) (spent).

5 The third edition was published in 1950 under the title 'the Statutes Revised'. Publication of a fourth edition, retitled 'Statutes in Force', which for the first time divided up the Acts according to their subject matter rather than chronologically, was completed in 1981 but has not been altogether successful.

6 Local and personal Acts are only dealt with to a limited extent.

7 As to Measures see PARA 1205 ante.

8 For statutes before 1963, the regnal year is also given. As to the regnal year see PARA 1245 note 5 ante.

9 Such enactments include statutory instruments and Measures.

10 The most recent version covers the years 1801 to 1947 and a supplementary index has been published covering the years 1948 to 1966.

11 There is also a Northern Ireland Statutory Publications Office. Some Westminster legislation extending only to Northern Ireland is nevertheless handled by the SPO. Products of the SPO include the annual volumes known as *Public General Acts and Measures* and *Statutory Instruments and Tables*, the edition known as *Statutes in Force*, the *Index to the Statutes*, the *Chronological Table of the Statutes*, the *Annual Index to Local Acts*, the *Index to Government Orders* and the *Table of Government Orders*. The SPO are producing, and will maintain, a computer database to be known as the *Statute Law Database*. This is expected to become available for on-line access by official and non-official users and to make way for it work has been suspended on revised material for *Statutes in Force* and certain statutory tables and indexes: see 546 HL Official Report (5th series) written answers col 55.

12 The promulgation list originates with a resolution passed by the House of Commons in 1801 requiring the King's Printer to supply copies of Acts to listed judicial and administrative officers. Earlier, Parliament had required transcripts of statutes to be furnished to the sheriffs and proclaimed by them within their jurisdictions (see Bac Abr, Statute (A); 1 Clifford's History of Private Bill Legislation (1885 Edn) 334 et seq).

The promulgation list is revised from time to time. The persons and authorities currently entitled to be on it are magistrates' courts, local authorities and a small number of circuit judges. The list currently covers certain subordinate legislation as well as Acts: see 248 HC Official Report (6th series) written answers col 869.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(3) ENACTING, PROMULGATION, PROOF AND CITATION OF ACTS/(iii) Proof and Citation of Acts/1252. Proof of Acts.

### **(iii) Proof and Citation of Acts**

#### **1252. Proof of Acts.**

Public Acts passed after the year 1850 are judicially noticed<sup>1</sup> and so do not require to be proved, but a private Act must be pleaded and proved by the party relying on it<sup>2</sup>. The law relating to the proof of private Acts is discussed elsewhere in this work<sup>3</sup>. It seems unlikely that the courts would be prepared to follow the suggestion contained in earlier authorities<sup>4</sup> and presume the existence of an Act for the purpose of protecting a person who has long enjoyed a right the origin of which cannot be ascertained<sup>5</sup>.

1 Interpretation Act 1978 ss 3, 22(1), Sch 2 para 2. This applies also to Bills for such Acts: see *Greenwich London Borough Council v Powell* [1989] AC 995, [1989] 1 All ER 65, HL. As to the doctrine of judicial notice see PARA 1352 post.

2 See CIVIL PROCEDURE vol 11 (2009) PARA 889. As to public and private Acts see PARA 1208 et seq ante.

3 See CIVIL PROCEDURE vol 11 (2009) PARA 889.

4 See especially *A-G v Ewelme Hospital* (1853) 17 Beav 366 at 390 per Romilly MR. See also *Lopez v Andrew* (1826) 3 Man & Ry KB 329n.

5 No such presumption appears ever to have been made. In *Harper v Hedges*[1924] 1 KB 151 at 153, CA, the court considered that it would be difficult to presume the existence of a statute passed and lost in the previous 150 years and in *Chilton v London Corpn*(1878) 7 ChD 735 at 740, Jessel MR rejected the suggestion as being impossible in principle.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(3) ENACTING, PROMULGATION, PROOF AND CITATION OF ACTS/(iii) Proof and Citation of Acts/1253. Method of citation of Acts.

### **1253. Method of citation of Acts.**

The most usual way of citing an Act is by reference to its short title<sup>1</sup>, with or without a reference to its chapter number<sup>2</sup>. The alternative method is to refer to the regnal year or years during which the Parliamentary session in which the Act was passed took place and the chapter number<sup>3</sup>. However, citation by short title is preferable<sup>4</sup> although the small number of statutes which do not have short titles must necessarily continue to be cited by the alternative method<sup>5</sup>. An Act may continue to be cited by the short title authorised by any enactment notwithstanding the repeal of that enactment<sup>6</sup>.

1 As to the short title see PARA 1268 post. As to the method of construing citations see PARA 1407 et seq post.

2 As to the chapter number see PARA 1271 post.

3 For the meanings of references to the session and regnal year or years see PARA 1245 note 5 ante. There was authority for this method in the Interpretation Act 1889 s 35(1), but this has been repealed on the ground that no such authority is now necessary: see the Interpretation Act 1978 s 25, Sch 3; and PARA 7A of the recommendations annexed to the *Report on the Interpretation Act 1889 etc* (Law Com no 90), on which the Interpretation Act 1978 was based. For the same reason that Act also repealed the proposition contained in the Interpretation Act 1889 s 35(1) that an enactment could be cited by reference to the section or subsection of the Act in which it was contained.

4 If an Act is cited simply by regnal year and chapter (or calendar year and chapter, which is also sometimes used), no indication is given of its subject matter and there is a greater risk of a misprint. Moreover, the various collections of earlier statutes are not always in agreement as to the years and chapters of individual statutes, although, so far as citations in statutes are concerned, this problem is resolved by the Interpretation Act 1978 s 19(1): see PARA 1255 post.

5 This is clearly contemplated by *ibid* s 19(1), which re-enacted the Interpretation Act 1889 s 35(2). See also PARA 7A of the recommendations annexed to the *Report on the Interpretation Act 1889 etc* (Law Com no 90).

6 Interpretation Act 1978 s 19(2).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(3) ENACTING, PROMULGATION, PROOF AND CITATION OF ACTS/(iii) Proof and Citation of Acts/1254. Citing enactments by a collective title.

### **1254. Citing enactments by a collective title.**

It is the practice for an Act whose subject matter is similar to that of a previous Act, or group of Acts, to provide that it may be cited together with the previous Act or group under what is known as a collective title, which may or may not end with the relevant calendar years<sup>1</sup>. Sections or other enactments within previous Acts may also be included in a collective title<sup>2</sup>. The practice relates purely to citation and is quite distinct from the practice of saying that a statute is to be construed as one with a previous Act or group, though the two may be combined in the same enactment<sup>3</sup>.

1 The Short Titles Act 1896 s 2, Sch 2 gave collective titles to a large number of earlier statutes. The Interpretation Act 1978 s 5, Sch 1 (as amended) defines a number of collective titles, ie 'the Corporation Tax Acts', 'the Income Tax Acts', 'the Lands Clauses Acts' and 'the Tax Acts': see further PARAS 1229 note 2 ante, 1385 post.

2 Thus the Companies Act 1981 s 119(2) (repealed), provided for the following to be cited together as the Companies Acts 1948 to 1981: the Companies Act 1948, the Companies Act 1967 Pts I, III (ss 1-57, 109-118), the Companies (Floating Charges and Receivers) (Scotland) Act 1972, the European Communities Act 1972 s 9, the Stock Exchange (Completion of Bargains) Act 1976 ss 1-4, the Insolvency Act 1976 s 9, the Companies Act 1976, the Companies Act 1980 and the Companies Act 1981 (except ss 28, 29) (all now repealed and consolidated as the Companies Act 1985 (with later amendments)).

3 As to directions that statutes are to be construed as one see PARA 1485 post. The practice of providing that Acts may be cited under a collective title may affect the interpretation of the Acts indirectly, for a provision for collective citation may be regarded by the courts as an indication of Parliament's view that the statutes in question are in *pari materia*: see PARA 1485 post. For further details regarding collective titles see Bennion, *Statutory Interpretation* (2nd Edn, 1992) s 262.

## UPDATE

### 1254 Citing enactments by a collective title

NOTE 2--Insolvency Act 1976 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(3) ENACTING, PROMULGATION, PROOF AND CITATION OF ACTS/(iii) Proof and Citation of Acts/1255. Construction of citation by regnal year etc.

### 1255. Construction of citation by regnal year etc.

The various collections of the earlier statutes do not always agree as to the regnal years and chapter numbers of particular Acts<sup>1</sup>, and there have been variations between such collections in the numbering of sections of statutes<sup>2</sup>. So far as citations in statutes passed since 1889 are concerned, problems of identification arising from discrepancies such as these are resolved by the rule that where an Act cites another by year, statute, session<sup>3</sup> or chapter, or a section or other portion of another Act by number or letter, then, unless the contrary intention appears, the reference is to be read as referring:

- (1) in the case of Acts included in any revised edition of the statutes printed by authority, to that edition<sup>4</sup>;
- (2) in the case of Acts not so included but included in the edition of the statutes prepared under the direction of the Record Commission, to that edition<sup>5</sup>; and
- (3) in any other case, to the copies of the statutes printed by the Queen's Printer<sup>6</sup>, or under the superintendence or authority of Her Majesty's Stationery Office<sup>7</sup>.

- 1 See eg the Table of Variances set out at the beginning of Part I of the *Chronological Table of the Statutes*.
- 2 Thus, the section (now repealed) of 29 Car 2 c 3 (Statute of Frauds) (1677) dealing with contracts for the sale of goods exceeding £10 in value was shown as s 16 in the Statutes of the Realm and as s 17 in the Statutes at Large. As to the repeal of the section see note 4 *infra*.
- 3 As to the meaning of 'statute' and 'session' in this context see PARA 1245 note 6 *ante*. For the meaning of 'Act' see PARA 1232 note 2 *ante*.
- 4 Interpretation Act 1978 ss 19(1)(a), 22(1), Sch 2 para 3. As to revised editions of the statutes see PARA 1251 *ante*. Thus the edition of the Statutes Revised in force at the passing of the Sale of Goods Act 1893 (repealed), gave the section referred to in note 2 *supra* as s 16, and not s 17, of 29 Car 2 c 3 (Statute of Frauds) (1677), since an examination of the original text had shown the Statutes of the Realm to be correct in this respect. The Sale of Goods Act 1893 Schedule (repealed), which stated expressly, but unnecessarily, that it was to be read as referring to the Statutes Revised therefore repealed the section in question as s 16, but a note was added to the effect that the section was 'commonly cited' as s 17.
- 5 Interpretation Act 1978 s 19(1)(b). The edition referred to is that commonly known as the Statutes of the Realm and consisting of nine folio volumes which were published between 1810 and 1822 and contain the statutes from 1235 to 1713, ie before the reign of George I. It was prepared by the first Record Commissioners, who, on their appointment by the Crown, in response to an address from the House of Commons, to consider the condition of public records generally, resolved at their first sitting on the preparation of 'a complete and authentic collection of the Statutes': Ilbert's *Legislative Methods and Forms* (1901 Edn) 21.
- 6 As to the Queen's Printer see PARA 1249 *ante*.
- 7 Interpretation Act 1978 s 19(1)(c).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/(i) Framework of an Act/1256. Structure and format of an Act.

## **(4) FRAMEWORK AND COMPONENTS OF AN ACT**

### **(i) Framework of an Act**

#### **1256. Structure and format of an Act.**

An Act of Parliament consists of the entirety of the material to which royal assent is given<sup>1</sup> and the whole of it is required to be considered when the Act is being applied. The components of an Act<sup>2</sup> fall into four groups. The first group relates to the framework of the Act<sup>3</sup>. The second group, to which the greatest weight is attached in interpretation, consists of operative components of the Act<sup>4</sup>. The third group consists of amendable descriptive components of the Act, to which less weight is attached<sup>5</sup>. The fourth group, to which little weight is attached, consists of unamendable descriptive components of the Act<sup>6</sup>. However to treat any component of an Act as in some way unreliable goes against a principle of law expressed in the maxim *omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium* (all things are presumed to be rightly and duly performed unless the contrary is proved). Any suggestion that certain components of an Act are to be treated, for reasons connected with their parliamentary history, as being unreliable or not part of the Act is thus unsound and contrary to principle<sup>7</sup>.

The parliamentary clerks who are empowered to make what are known as printing corrections to Bills have been judicially called 'irresponsible'<sup>8</sup>. This is incorrect, since these clerks are subject to the authority of Parliament. Objection may be taken by a member to anything done

by a parliamentary official in relation to a Bill; and it would be open to either House, if it thought fit, to order rectification of a printing correction which it considered unsuitable.

The incapacity of the courts to challenge the procedure by which a purported Act has found its way onto the statute book is underlined by the statement in the Bill of Rights that 'proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament'<sup>9</sup>.

Its layout or format is thus part of an Act<sup>10</sup>. A large Act may be divided into Parts<sup>11</sup>. A smaller subdivision (whether there are Parts or not) is the group of sections or paragraphs marked out by a cross-heading<sup>12</sup>. If material is put into the form of a footnote it is still fully a part of the Act<sup>13</sup>.

1 As to royal assent see PARA 1245 ante.

2 The enactment procedure shows how the various components become part of an Act and what their status is: see PARA 1245 ante. As to the functional construction rule, by which in the interpretation of an Act due regard is to be had to the respective functions of its components, see PARA 1393 et seq post.

3 See the text and notes 5-14 infra; and PARA 1257 post.

4 See PARA 1258 post.

5 See PARA 1263 post.

6 See PARA 1270 post.

7 *Re Vexatious Actions Act 1886, Re Boaler*[1915] 1 KB 21 at 40, CA, per Scrutton LJ.

8 *Re Woking UDC (Basingstoke Canal) Act 1911*[1914] 1 Ch 300 at 322, CA, per Phillimore LJ.

9 Bill of Rights (1689) art 9.

10 See eg *Alcom Ltd v Republic of Colombia*[1984] AC 580, [1984] 2 All ER 6, HL. In finalising the details of the text of an Act, the Crown still has a minor part to play. For this purpose it acts through its officer, the Clerk of the Parliaments, who in turn acts through officials of the Public Bill Office of the House of Lords: see Bennion, *Statutory Interpretation* (2nd Edn, 1992) s 45.

11 It was the former practice for the opening section of a large Act to say that the Act was divided into Parts: see eg the Merchant Shipping Act 1854; the Companies Act 1862 (both repealed). For the effect see *Inglis v Robertson*[1898] AC 616 at 630, HL, per Lord Herschell.

12 This is known as a fasciculus.

13 See eg *Erven Warnink BV v Townend & Sons (Hull) Ltd (No 2)* [1982] 3 All ER 312 at 316, [1982] RPC 511 at 516, CA.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/(i) Framework of an Act/1257. Incorporation of other enactments by reference.

### **1257. Incorporation of other enactments by reference.**

It is a common device of legislative drafters to incorporate earlier statutory provisions by reference, rather than setting out similar provisions in full<sup>1</sup>. This saves space and also attracts the case law and other learning attached to the earlier provisions. Its main advantage is a parliamentary one, however, since it shortens Bills and cuts down the area for debate<sup>2</sup>. Incorporation of an enactment by reference does not affect the continued separate identity of that enactment<sup>3</sup>. By implication it requires any necessary verbal adjustments to be made in the

incorporated provisions where, as is the modern practice<sup>4</sup>, these adjustments are not spelt out<sup>5</sup>. The technique of incorporation by reference has received much judicial criticism<sup>6</sup> and is therefore less used today.

While each Act remains a separate entity, Acts dealing with the same subject matter may be recognised as forming a group. They may be given a collective title<sup>7</sup> and are said to be in *pari materia*<sup>8</sup>. Formerly it was common expressly to provide that a series of Acts in *pari materia* should be construed as one<sup>9</sup>.

Another enactment may be attracted by what is called archival drafting<sup>10</sup>. Subject to any amendments subsequently made for the purposes of the applying Act, the body of law and practice thus attracted is to be interpreted, unless the contrary intention appears, as if it had remained unaltered since that time<sup>11</sup>.

Statutory interpretation where other enactments are incorporated by reference is considered elsewhere in this title<sup>12</sup>.

1 A well-known general instance is furnished by the practice of enacting Clauses Acts or other adoptive Acts: see PARAS 1228-1229 ante. For examples see the Public Health Act 1875 s 54 (repealed); the Telecommunications Act 1984 s 37(2) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 63(2)). The latter provides that the Town and Country Planning Act 1990 s 325(1)-(5) (as amended), (8), (9), (which contains supplementary provisions relating to the powers of entry conferred by the Act of 1990) should apply with specified modifications to a power conferred by the Act of 1984. As to the effectiveness of such a formula to give to the earlier enactments the same force as if they had been set out verbatim in the adopting Act see *R v Smith* (1873) LR 8 QB 146; and cf *R v Stepney Union* (1874) LR 9 QB 383 at 392, 396.

2 Incorporation by reference accords with the maxim *verba relata hoc maxime operantur per referentiam ut in eis in esse videntur* (words to which reference is made in an instrument have the same operation as if they were inserted in the instrument referring to them): Co Litt 359a.

3 As to the repeal of an incorporated enactment see PARA 1312 post.

4 See eg *Porter v Manning* (1984) Times, 23 March. Some earlier Acts assisted the reader by setting out in full, with any modifications incorporated, the provisions that were applied by reference: see eg the Transvaal Loan (Guarantee) Act 1907 s 1(2).

5 *R v Whitehead* [1982] QB 1272 at 1282, [1982] 3 All ER 96 at 102, CA. As to implied enactments see PARA 1234 ante.

6 See eg *Knill v Towse* (1889) 24 QBD 186 at 195-196, DC; *Willingale v Norris* [1909] 1 KB 57 at 61, DC; *Chislett v Macbeth & Co* [1909] 2 KB 811 at 815, CA (on appeal [1910] AC 220, HL); *Woolley v Moore* [1953] 1 QB 43 at 46, [1952] 2 All ER 797 at 798, DC.

7 See PARA 1254 ante.

8 See PARA 1220 ante.

9 See PARA 1485 post.

10 By archival drafting there is incorporated into the applying Act a whole body of other law as it existed at a stated time, which may include the practice prevailing, as well as the substantive law in force, at that time. The provisions thus incorporated may not otherwise continue in force. This practice is called archival drafting because it requires persons construing the applying Act (perhaps after a lengthy period has elapsed since the stated time) to engage in historical research in order to find out what the law and practice thus imported amounts to. The effect is to 'freeze' that law and practice, so far as thus imported, in the form it was in at the stated time.

11 See eg the Supreme Court Act 1981 s 19(2). This, following earlier precedents, states that there shall be exercisable by the High Court 'all such... jurisdiction (whether civil or criminal) as was exercisable by it immediately before the commencement of this Act'. This relates back, by way of the Supreme Court of Judicature (Consolidation) Act 1925 s 18 (repealed), to the setting up of the High Court by the Supreme Court of Judicature Act 1873 (repealed) and the transfer by s 16 (repealed) in similar language to the new court of the statutory jurisdiction of courts such as the Court of Queen's Bench and the Court of Chancery. Section 16 (repealed) even brought in their inherent jurisdiction. As to this major piece of archival drafting see *Andrews v Barnes* (1888) 39 ChD 133, CA; *EMI Records Ltd v Ian Cameron Wallace Ltd* [1983] Ch 59 at 70-71, [1982] 2 All

ER 980 at 988; *The Despina GK* [1983] QB 214 at 216, [1983] 1 All ER 1 at 3. For other examples see the Debtors Act 1869 s 6 (which confers a power of arrest operating only where the debtor would have been liable to arrest immediately before the commencement of that Act); the Crown Proceedings Act 1947 s 1 (which makes it necessary to refer to all the enactments repealed by the Act together with the law and practice in relation to petitions of right); the Post Office Act 1969 s 80 (amended by the British Telecommunications Act 1981 s 87, Sch 3 para 51(6)) (bringing in former Civil Service practice); the Solicitors Act 1974 s 50(2) (bringing in the practice relating to the long-vanished proctors) (see LEGAL PROFESSIONS vol 65 (2008) PARA 745); the Supreme Court Act 1981 s 29(1) (which gave the High Court power to make orders of mandamus 'in those classes of cases in which it had power to do so immediately before the commencement of this Act'); the Representation of the People Act 1983 s 5(1) (residence to be determined 'in accordance with the general principles formerly applied'). As to the disadvantages of archival drafting in relation to estate duty (now inheritance tax), which prevented the Acts ever being consolidated see Bennion, *Statute Law* (3rd Edn, 1990) 294. See also Bennion, *Statutory Interpretation* (2nd Edn, 1992) 524-525.

12 See PARA 1396 post.

## UPDATE

### 1257 Incorporation of other enactments by reference

NOTE 11--Supreme Court Act 1981 s 29(1) (now Senior Courts Act 1981 s 29(1)) substituted: Civil Procedure (Modification of Supreme Court Act 1981) Order 2004, SI 2004/1033.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/(ii) Operative Components of an Act/1258. Nature of the operative components of an Act.

## (ii) Operative Components of an Act

### 1258. Nature of the operative components of an Act.

The operative components of an Act are the sentences that constitute Parliament's pronouncements of law. The operative components normally consist of sections and Schedules, either of which may incorporate a proviso or a saving<sup>1</sup>, and which are often called 'enactments'<sup>2</sup>. Judges formerly used terms such as 'enacting part', 'enacting provision', 'enacting words' or 'enacting portion'<sup>3</sup> and reference has been made to 'the purview or enacting part of the statute'<sup>4</sup>; but the enacting words are strictly the words at the beginning of an Act more usually known as the enacting formula<sup>5</sup>. The term 'operative' has been used by judges<sup>6</sup>.

The operative components of an Act are obviously by far the most important, for they carry the legislative message directly. All other elements serve as commentaries on the operative components, of greater or less utility depending on their precise function.

1 Under the functional construction rule described in PARA 1393 post, the significance to be attached by the interpreter to any component of an Act must be assessed in conformity with its legislative function as such a component. As to the function of operative components see the text and notes 2-7 infra; and PARAS 1259-1262 post.

2 For the meaning of 'enactment' see PARA 1232 ante.

3 All four terms will be found in the speeches in *A-G v Prince Ernest Augustus of Hanover* [1957] AC 436, [1957] 1 All ER 49, HL: see eg at 460-461 and 52-53 per Viscount Simonds ('enacting part', 'enacting provision' and 'enacting words') and at 469 and 58 per Lord Morton of Henryton ('enacting portion').



4 See *Brett v Brett* (1826) 3 Add 210 at 216 per Nicholl MR.

5 See PARA 1273 post. The mistake may derive from the fact that it was formerly the custom to preface each section of an Act by a formula such as 'Be it enacted' or 'Be it further enacted'. This practice was however rendered obsolete by Lord Brougham's Act (13 & 14 Vict c 21) (1850) s 2 (repealed): see now the Interpretation Act 1978 s 1. The adjective 'enacting' was also used in contrast to 'declaratory': see eg MD Chalmers, *Sale of Goods Act 1893* (12th Edn) 197.

6 See eg *Glegg v Bromley* [1912] 3 KB 474 at 492 per Parker J ('operative part'); *Stamp Duties Comr v Atwill* [1973] AC 558 at 562, [1973] 1 All ER 576 at 580, PC, per Viscount Dilhorne ('operative portion'). The description is appropriate since it describes the parts of the Act that carry the direct message of the legislator.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/(ii) Operative Components of an Act/1259. The section.

### 1259. The section.

Where (as is usually the case) an Act contains more enactments than one, it is divided into sections<sup>1</sup>. Each section is deemed to be a substantive enactment, without the need for enacting words other than the Act's initial enacting formula<sup>2</sup>. Collectively, the sections are known as the body of the Act<sup>3</sup>. In debates on a Bill, the provision that on enactment becomes a section is referred to as a clause (though in the Bill itself the word section is used) and sometimes judges and others loosely refer to sections of an Act as clauses<sup>4</sup>. In modern Acts, sections bear arabic numerals unbracketed<sup>5</sup>. Unless the section is divided into subsections, the practice is to draft it as one sentence<sup>6</sup>.

As sections grew longer, drafters began to subdivide them. The subdivisions are known as subsections and each bears an arabic numeral in round brackets. Subsections are related to the theme of the section, but each is drafted to stand independently as a separate sentence. In debates on a Bill, subsections are referred to as such and not as sub-clauses. To aid the reader, the modern drafter makes use of paragraphing in the undivided section, or in the subsection. The provision remains a single sentence, but is printed with indentations and PARagraph numbers so as to bring out the sense and aid cross-referencing. The numbering of paragraphs is by small letters in round brackets. Smaller divisions are referred to as sub-paragraphs and then heads. Judges take notice of the paragraphing as a guide to what are intended to be the units of sense<sup>7</sup>.

1 As to the interpretation of a section see the discussion of the functional construction rule in PARA 1393 post; and see also PARA 1398 post.

2 These two opening sentences reproduce the effect of Lord Brougham's Act (13 & 14 Vict c 21) (1850) s 2 (repealed), which was partly reproduced (ie as to the second sentence only) as the Interpretation Act 1889 s 8 (repealed) (see now the Interpretation Act 1978 s 1). In terms of 1850 conditions, the first sentence represented the existing practice but the second was new.

3 A section is one of the operative components of an Act and is referred to as a section 'of ' an Act. As to the nature of the operative components of an Act see PARA 1258 ante.

4 See eg *R v Dibdin* [1910] P 57 at 125, CA, per Moulton LJ (affd sub nom *Thompson v Dibdin* [1912] AC 533, HL).

5 Until the second half of the nineteenth century roman numerals were employed.

6 As to the reason for this see Bennion, *Statute Law* (3rd Edn, 1990) 44-45. For exceptions see eg the Coinage Act 1870 s 7 (repealed) (three sentences); the Supreme Court of Judicature Act 1881 s 9 (repealed) (four sentences).

<sup>7</sup> See eg *Eastman Photographic Materials Co Ltd v Comptroller-General of Patents, Designs and Trade-Marks* [1898] AC 571 at 579, 584, HL; *Nugent-Head v Jacob (Inspector of Taxes)* [1948] AC 321 at 329, [1948] 1 All ER 414 at 419, HL.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/(ii) Operative Components of an Act/1260. The Schedule.

## **1260. The Schedule.**

A Schedule is part of the Act to which it is attached<sup>1</sup>, being one of the operative components<sup>2</sup>. Material is put into a Schedule because it is too lengthy or detailed to be conveniently accommodated in a section<sup>3</sup>, or because it forms a separate instrument (such as a treaty or convention)<sup>4</sup>.

A Schedule is attached to the body of the Act by appropriate words in one or more of the sections. These are known as inducing words, the Schedule being an extension of the provisions which induce it<sup>5</sup>, and in the margin at the head of the Schedule the inducing section or sections is or are specified. Occasionally an error is made in doing this<sup>6</sup>, but that does not affect the validity of the Schedule.

It was formerly the practice for the inducing words to say that the Schedule was to be construed and have effect as part of the Act<sup>7</sup> but this is no longer done, being regarded as unnecessary. If by mischance the inducing words were omitted, the Schedule would still form part of the Act if that was the apparent intention.

Where the Schedule is in a form resembling sections, the units corresponding to sections are known as paragraphs. They do not have sidenotes<sup>8</sup>. Since the Schedule as a whole is annexed to the Act, it is not possible to argue that headings in the Schedule are somehow not really part of it, as some judges have sought to do in the case of headings in the body of the Act, it is submitted incorrectly<sup>9</sup>.

<sup>1</sup> 'A Schedule in an Act is a mere question of drafting, a mere question of words. The Schedule is as much a part of the statute and is as much an enactment, as any other part': *A-G v Lamplough* (1878) 3 Ex D 214 at 229, CA, per Brett LJ. See also, to like effect, *Flower Freight Co Ltd v Hammond* [1963] 1 QB 275, [1962] 3 All ER 950, DC; *R v Legal Aid Committee No 1 (London) Legal Aid Area, ex p Rondel* [1967] 2 QB 482, [1967] 2 All ER 419, DC; *Metropolitan Police Comr v Curran* [1976] 1 All ER 162, [1976] 1 WLR 87, HL.

<sup>2</sup> A Schedule is always given an initial capital and is referred to as a Schedule 'to' an Act. As to the nature of the operative components of an Act see PARA 1258 ante.

<sup>3</sup> As to the concept of a 'section' of an Act see PARA 1259 ante.

<sup>4</sup> For early examples of a Schedule see the Privilege of Parliament Act 1512; the Isle of Man Purchase Act 1765 (repealed).

<sup>5</sup> Sometimes an error occurs in the inducing words; eg the House of Commons Disqualification Act 1975 s 10(2) (as originally enacted) provided that the enactments 'specified in Sch 4 to this Act' are repealed. The Act contains no Sch 4. It did however contain Sch 3 (now repealed), which was headed 'Repeals', and other internal evidence confirms that Sch 3 (repealed) is the one intended. In such a case, the court will not frustrate Parliament's intention by applying the literal meaning of the inducing words, but will instead apply a corrected version (eg as if the inducing words referred to the enactments 'specified in Sch 3'). For the power to amend the House of Commons Disqualification Act 1975 by Order in Council see s 5(1); and as to the requirement thereafter to print amended copies see s 5(2).

6 Eg in the official print of the Crown Proceedings Act 1947, the head of Sch 1 omits a reference to one of the inducing sections, s 13.

7 See eg the Ballot Act 1872 s 28 (repealed).

8 Sub-divisions of these are called sub-paragraphs. Further sub-divisions are known as heads. If the Schedule is in tabular form the items are called entries. A common instance of the tabular form is the repeal Schedule.

9 As to the treatment of headings see PARA 1275 post; as to the interpretation of a Schedule see the discussion of the functional construction rule in PARA 1393 post; and see also PARA 1399 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/(ii) Operative Components of an Act/1261. The proviso.

### **1261. The proviso.**

A proviso is a formula beginning 'Provided that...', which is placed at the end of a section or subsection of an Act, or of a paragraph or sub-paragraph of a Schedule and the intention of which is to narrow the effect of the preceding words<sup>1</sup>.

A proviso is one of the operative components of an Act<sup>2</sup>. It enables a general statement to be made as a clear, uncomplicated proposition, any necessary qualifications being kept out of it and relegated to the proviso at the end<sup>3</sup>, and may be compared to a saving<sup>4</sup>. Other drafting techniques can be used to achieve the same result as the proviso<sup>5</sup>.

Today the only operative significance of identifying a statement as a proviso lies in the burden of proof in criminal law. At common law the onus of proving that a proviso applies rests on the accused<sup>6</sup>. By statute this has been extended to similar forms, so that the prosecution is not now required to specify or negative an exception, exemption, proviso, excuse or qualification<sup>7</sup>. It is thus for the accused to raise and prove what is in substance an exception, regardless of the form in which it is expressed<sup>8</sup>. The civil standard of proof applies, even in criminal proceedings<sup>9</sup>.

A reference to a section includes any proviso to the section, since the proviso forms part of the section. Thus the repeal of the section also repeals the proviso<sup>10</sup>. In accordance with principle, the repeal may be effected by implication<sup>11</sup>.

1 The preceding general statement is sometimes called the 'purview': see eg *A-G v Chelsea Waterworks* (1731) Fitz-G 195. That is, however, based on a misconception, for the purview is truly the enacting formula: see PARA 1273 post. As to the interpretation of a proviso see the explanation of the functional construction rule in PARA 1393 post; and see also PARA 1400 post.

2 As to the nature of the operative components see PARA 1258 ante.

3 See eg the Obscene Publications Act 1959 s 3(3) (amended by the Criminal Law Act 1977 ss 53(5), 64(5), Sch 12).

4 As to the saving see PARA 1262 post.

5 One such technique is the 'so however' formula, whereby the passage ends 'so however that...' instead of with the proviso: see eg the Consolidation of Enactments (Procedure) Act 1949 s 2 (definition of 'the Gazette' cited in PARA 1247 note 3 ante). Another technique is for the two propositions to be presented as separate subsections, the provision that would have been a proviso being a separate enactment to which the enactment qualified is either expressly or sometimes only implicitly to be subject: see eg the Reserve Forces Act 1980 s 125, reproducing the Auxiliary Forces Act 1953 s 7 (repealed). The modern drafting practice is to use the last method.

6 *R v Audley* [1907] 1 KB 383, CCR.

7 Indictment Rules 1971, SI 1971/1253, r 6(c) (reproducing the Indictments Act 1915 Sch 1 r 5(2) (repealed)); Magistrates' Courts Act 1980 s 101 (reproducing the Summary Jurisdiction Act 1879 s 39, which in turn reproduced the Summary Jurisdiction Act 1848 s 14 (both repealed)).

8 *R v Oliver* [1944] KB 68, [1943] 2 All ER 800, CCA; *R v Edwards* [1975] QB 27, [1974] 2 All ER 1085, CA; *R v Hunt* [1987] AC 352, [1987] 1 All ER 1, HL. For civil proceedings see RSC Ord 18 r 8.

9 *London Borough of Islington v Panico* [1973] 3 All ER 485, [1973] 1 WLR 1166, DC; *Wings Ltd v Ellis* [1985] AC 272, [1984] 3 All ER 577, HL; *R v Hunt* [1987] AC 352, [1987] 1 All ER 1, HL.

10 *Horsnail v Bruce* (1873) LR 8 CP 378 at 385; but see *Piper v Harvey* [1958] 1 QB 439, [1958] 1 All ER 454, CA, where the proviso extended beyond the repealed enactment. See also *Carpenters Co v British Mutual Banking Co* [1938] 1 KB 511, [1937] 3 All ER 811, CA.

11 *Whitehead v Smithers* (1877) 2 CPD 553. As to implied repeal see PARA 1299 et seq post.

## UPDATE

### 1261 The proviso

NOTE 5--Reserve Forces Act 1980 s 125 repealed: Reserve Forces Act 1996 Sch 11.

NOTE 7--SI 1971/1253 revoked: SI 2007/699.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/(ii) Operative Components of an Act/1262. The saving.

### 1262. The saving.

A saving is a provision the intention of which is to narrow the effect of the enactment to which it refers so as to preserve some existing legal rule or right from its operation. It often begins with the words 'Nothing in this [Act] [section] [etc] shall ...<sup>1</sup>'. A saving is one of the operative components of an Act<sup>2</sup> and resembles a proviso, except that it has no particular form<sup>3</sup> and it preserves an existing legal rule or right<sup>4</sup>, whereas a proviso is usually concerned with limiting the new provision made by the section to which it is attached. A saving to a repeal cannot affect transactions complete at the date of the repealing statute<sup>5</sup>.

A saving may be qualified or conditional<sup>6</sup>. Often a saving is strictly unnecessary, but is put in for the avoidance of doubt<sup>7</sup>. Some savings are general and of standing effect<sup>8</sup>.

1 As to the interpretation of a saving see the discussion of the functional construction rule in PARA 1393 post; and see also PARA 1401 post.

2 As to the nature of the operative components of an Act see PARA 1258 ante.

3 As to the proviso see PARA 1261 ante.

4 *Alton Woods' Case, A-G v Bushopp* (1600) 1 Co Rep 40b; *Arnold v Gravesend Corp'n* (1856) 2 K & J 574 at 591; *R v Pirehill North Justices* (1884) 14 QBD 13 at 19, CA.

5 *Butcher v Henderson* (1868) LR 3 QB 335. As to repeals see PARA 1296 et seq post.

6 See eg *Royal Borough of Windsor and Maidenhead v Brandrose Investments Ltd* [1981] 3 All ER 38 at 43, [1981] 1 WLR 1083 at 1088; on appeal [1983] 1 All ER 818, [1983] 1 WLR 509, CA (referring to the Town and

Country Planning Act 1971 s 52(3)(a) (repealed; replaced by the Town and Country Planning Act 1990 s 106(4) (a); now substituted by the Planning and Compensation Act 1991 s 12(1)).

7 *Ealing London Borough Council v Race Relations Board* [1972] AC 342 at 363, [1972] 1 All ER 105 at 115, HL. See eg the Welsh Language Act 1967 s 5(3) (repealed); the Statute Law (Repeals) Act 1977 s 2.

8 An important example is the Interpretation Act 1978 s 16, relating to the effect of repeals: see PARA 1306 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/(iii) Amendable Descriptive Components of an Act/1263. Nature of amendable descriptive components.

### **(iii) Amendable Descriptive Components of an Act**

#### **1263. Nature of amendable descriptive components.**

An amendable descriptive component of an Act is a component which describes the whole or some part of the Act and was subject to amendment (as opposed to a mere printing correction) when the Bill for the Act was going through Parliament<sup>1</sup>. The following are amendable descriptive components: long title, preamble, purpose clause, recital, short title, example<sup>2</sup>.

Judges have sometimes said that amendable descriptive components are not part of the Act<sup>3</sup>; but the entire instrument is put out by Parliament as its Act and must be accepted as such<sup>4</sup>. Under the functional construction rule, the significance to be given by the interpreter to any component of an Act must be assessed in conformity with its legislative function as such a component<sup>5</sup>.

1 As to the making of printing corrections to Bills by parliamentary clerks see PARA 1241 ante.

2 See PARAS 1264-1269 post.

3 Thus Willes J, after asserting that the long title and other 'appendages' are not part of an Act, said of any Act passed after the practice of engrossing Acts on the Parliament Roll ceased in 1849: 'The Act, when passed, must be looked at just as if it were still entered upon a roll, which it may be again if Parliament should be pleased so to order; in which case it would be without these appendages ...' (*Claydon v Green* (1868) LR 3 CP 511 at 522). After the lapse of more than a century without renewed use of the Parliament Roll, it may confidently be asserted that this dictum is no longer good law, if indeed it ever was.

4 See PARA 1256 ante. This might seem to render irrelevant the question of whether a descriptive component is or is not amendable in Parliament. The distinction should be regarded as providing little more than a convenient demarcation line in explaining the significance of an Act's components. However some judges may continue to attach importance to the fact that amendable components were alterable by members of either House whereas, in practical terms, unamendable components were not.

5 As to the functional construction rule see PARA 1393 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/(iii) Amendable Descriptive Components of an Act/1264. Long title.

#### **1264. Long title.**

The long title<sup>1</sup> appears at the beginning of every Act. It opens with the words 'An Act to ...', followed by words briefly describing the objects<sup>2</sup>. The long title is one of the amendable descriptive components of the Act<sup>3</sup>. Judges have been known to confuse the long title with other descriptive components of an Act, such as the preamble<sup>4</sup>, a heading<sup>5</sup>, or the short title<sup>6</sup>.

There are many early dicta to the effect that the long title is not part of the Act and should be disregarded<sup>7</sup>. The courts began to give greater weight to the long title from the middle of the nineteenth century, although for the rest of that century opinion as to the exact weight to be given varied considerably<sup>8</sup>. Since the emergence of parliamentary legislation in its modern form, these dicta must be regarded as inapplicable; nowadays its long title is undoubtedly part of the Act<sup>9</sup>.

Because of their mainly procedural character, mistakes sometimes occur in long titles<sup>10</sup>.

1 Formerly and more correctly called the title. The adjective 'long' is used to point the contrast with the Act's 'short title' (ie the abbreviated name given to the Act to facilitate reference to it: see PARA 1268 post), but the adjective is not used in proceedings in Parliament, nor, normally, when a reference to the title is necessary in another Act (but see eg the entry relating to the Colonial Development Act 1929 in the Statute Law Revision Act 1953 Sch 1 (repealed)). As to the omission of parts of long titles in any revised edition of the statutes and the substitution of short titles in references to statutes in those editions see PARA 1227 note 8 ante. In the case of early statutes, the long title was known as the rubric, from the fact that it was sometimes printed in red (hence the reference to interpretation *a rubro ad nigrum*, from the red to the black [letter]). It was not invariably present: see *Powlter's Case* (1610) 11 Co Rep 29a at 33b. Its inclusion began about 1495, soon after legislation by Bill developed: see *Chance v Adams* (1696) 1 Ld Raym 77 at 78 per Treby CJ. However, very little attention was then paid to the terms of the title during the passage of the Bill through Parliament. 'The title ... is usually framed by the clerk of that house in which the Bill first passes and is seldom read more than once': Bac Abr, Statute (A). See also *R v Williams* (1757) as reported in 2 Keny 68 at 74 per Lord Mansfield CJ; *A-G v Lord Weymouth* (1743) Amb 20 at 23 per Lord Hardwicke LC. In the result, titles were frequently inaccurate: see *Powlter's Case* supra at 33b, where the inadequacy of the title of 27 Hen 8 c 10 (Statute of Uses) (1535) (repealed) was pointed out; and Bac Abr, Statute (A), citing as an instance 20 Geo 2 c 42 (Wales and Berwick) (1746) (repealed), the long title of which referred merely to the granting of certain rates and duties, although s 3 provided that in any statute, past or future, the expression 'England' was to include Wales and Berwick-upon-Tweed.

2 The true function of the long title pertains to the Bill which on royal assent became the Act, rather than to the Act. It sets out in general terms the purposes of the Bill and under the rules of parliamentary procedure (at least in the House of Commons) should cover everything which is in the Bill when introduced. If the Bill is amended so as to go wider than the long title, the long title is required to be amended to correspond; so it is not, as might at first sight appear, intended as a helpful summary of the contents inserted for the convenience of a user of the Act, but a parliamentary device, whose purpose is in relation to the Bill and its parliamentary progress. Under parliamentary rules, a Bill of which notice of presentation has been given is deemed to exist as a Bill even though it consists of nothing but the long title. Once the Bill has received royal assent, the long title is therefore vestigial.

One important way in which the long title may be influenced by parliamentary considerations concerns the doctrine of 'scope' in the House of Commons. This renders an amendment out of order if it is beyond the scope of the Bill: see Erskine May's *Parliamentary Procedure* (21st Edn, 1989) 491. Where a government Bill is contentious, the drafter may seek to cut down the number of amendments that have to be debated by drawing the long title tightly. The House officials will treat this as narrowing the scope, though the scope does not entirely depend on the long title; but the doctrine of scope does not always succeed in keeping out extraneous material: see, eg, the Theft Act 1968 s 30 (as amended), which makes provision in relation to spouses going much wider than theft and related offences. In other cases the drafter will be content with a broad and vague long title, which has the advantage of accommodating possible amendments to the Bill without requiring the long title to be amended (one of the broadest and vaguest long titles on record was attached to the statute 22 Hen 8 c 9 (1530) (repealed): 'An Act for poysonyng').

3 As to the nature of the amendable descriptive components of an Act see PARA 1263 ante.

4 *Ward v Holman* [1964] 2 QB 580 at 586-587, [1964] 2 All ER 729 at 730-731, DC; *Thornton v Kirklees Metropolitan Borough Council* [1979] QB 626 at 635, [1979] 2 All ER 349 at 351, CA; *Re Coventry decd* [1980] Ch 461 at 484, [1979] 3 All ER 815 at 819, CA; *R v Immigration Appeal Tribunal, ex p Kassam* [1980] 2 All ER 330 at 332, [1980] 1 WLR 1037 at 1040, CA; *Crozier v Crozier* [1994] Fam 114 at 122, [1994] 2 All ER 362 at 370.

5 *Re Diplock, Diplock v Wintle* [1948] Ch 465 at 507, sub nom *Re Diplock's Estate, Diplock v Wintle* [1948] 2 All ER 318 at 340, CA (affd sub nom *Ministry of Health v Simpson* [1951] AC 251, [1950] 2 All ER 1137, HL); *Hodgson v Marks* [1971] Ch 892, [1970] 3 All ER 513.

6 *The Ydun* [1899] P 236 at 236; *R v East Powder Justices, ex p Lampshire* [1979] QB 616 at 622, [1979] 2 All ER 329 at 332, DC; *R v Duncalf* [1979] 2 All ER 1116 at 1120, [1979] 1 WLR 918 at 922, CA; *R v West Yorkshire Coroner, ex p Smith* [1983] QB 335 at 338, [1982] 2 All ER 801 at 802, DC; on appeal [1983] QB 335, [1982] 3 All ER 1098, CA.

7 'The title is no part of the Act,... for originally there were no titles to the Acts;... the judges... added the title': *A-G v Lord Weymouth* (1743) Amb 20 at 22-23 per Lord Hardwicke LC. See also *Powtler's Case* (1610) 11 Co Rep 29a at 33b; *Mills v Wilkins* (1703) 6 Mod Rep 662; *R v Williams* (1757) as reported in 2 Keny 68 at 74; *R v Wilcock* (1845) 7 QB 317; *Salkeld v Johnson* (1848) 2 Ex 256 at 282; *Hunter v Nockolds* (1850) 1 Mac & G 640 at 651; *Earl of Shrewsbury v Scott* (1859) 6 CBNS 1 at 215; *Claydon v Green* (1868) LR 3 CP 511.

8 See eg *Brett v Brett* (1826) 3 Add 210 at 218 (a decision somewhat in advance of its time); *Coomber v Berkshire Justices* (1882) 9 QBD 17 at 33; *East and West India Dock Co v Shaw, Savill and Albion Co* (1888) 39 Ch D 524 at 531; *Fielding v Morley Corp* [1899] 1 Ch 1 at 4, CA; *Re Debtor, ex p Debtor* [1903] 1 KB 705 at 708, CA. Cf *Blake v Midland Rly Co* (1852) 18 QB 93 at 109; *Claydon v Green* (1868) LR 3 CP 511 at 522; *Allkins v Jupe* (1877) 2 CPD 375 at 383; *Kenrick & Co v Lawrence & Co* (1890) 25 QBD 99 at 104.

9 *Vacher & Sons Ltd v London Society of Compositors* [1913] AC 107 at 128, HL, per Lord Moulton; *Fielding v Morley Corp* [1899] 1 Ch 1 at 4, CA, per Lindley MR. See also PARAS 1206, 1256 ante. As to the use of the long title in statutory interpretation see the description of the functional construction rule in PARA 1393 post; and see also PARA 1403 post.

10 See eg the long title to the Rating and Valuation Act 1928 (repealed), which included the words 'to provide for obtaining decisions on points of law with a view to securing uniformity in valuation'. They related to nothing in the body of the Act because the clause allowing such decisions to be obtained was dropped.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/(iii) Amendable Descriptive Components of an Act/1265. Preamble.

## 1265. Preamble.

A preamble to an Act is a preliminary statement, beginning with the word 'Whereas'<sup>1</sup>, of the facts or reasons which are thought to have made the passing of the Act necessary or desirable. It is placed immediately after the long title<sup>2</sup> and the date of royal assent<sup>3</sup>. The preamble is similar to a recital<sup>4</sup> and is one of the amendable descriptive components of an Act<sup>5</sup>. Since the middle of the nineteenth century the preamble has been accepted as part of the Act<sup>6</sup>.

The preamble is an optional feature in public general Acts though compulsory in private Acts<sup>7</sup>. Few modern public general Acts contain a preamble<sup>8</sup>.

1 In early statutes 'Albeit' was used instead: see eg the Laws in Wales Act 1535 (repealed).

2 As to the long title see PARA 1264 ante.

3 See PARA 1272 post. As to the use of the preamble in statutory interpretation see the discussion of the functional construction rule in PARA 1393 post; and see also PARA 1404 post. As to the omission of preambles from revised editions of the statutes see PARA 1227 note 8 ante.

4 See PARA 1267 post.

5 As to the nature of the amendable descriptive components of an Act see PARA 1263 ante.

6 *Salkeld v Johnson* (1848) 2 Exch 256 at 283, Ex Ch, per Pollock CB; *West Ham v Iles* (1883) 8 App Cas 386, HL. For the earlier contrary view see *Mills v Wilkins* (1703) 6 Mod Rep 62 per Holt CJ. See also PARAS 1206, 1256 ante.

7 For the distinction between public general Acts and private Acts see PARAS 1208-1211 ante. By the rules of both Houses of Parliament, a private Bill is required to have a preamble setting forth the expediency of enacting the Bill, the allegations in which must be proved. For the distinction between public and private Bills see PARA 1212 ante. When a private Bill is referred to a select committee and is opposed on the question of its general expediency, the promoters are called on to establish by argument and evidence that the Bill is expedient, a process known as proving the preamble. Failure to prove it usually means rejection of the Bill. See further PARLIAMENT vol 34 (Reissue) PARA 897. See also Erskine May's Parliamentary Practice (21st Edn, 1989) 902-904 (unopposed Bills), 904 et seq (opposed Bills).

8 For examples of such Acts with preambles see the Endangered Species (Import and Export) Act 1976; the Canada Act 1982. As long ago as 1911 Lord Alverstone CJ regretted that the practice of inserting preambles had been discontinued 'as they were often of great assistance to the courts in construing the Acts': *LCC v Bermondsey Bioscope Co Ltd* [1911] 1 KB 445 at 451, DC. The modern practice of prefixing explanatory and financial memoranda to public Bills on introduction (see PARA 1425 post) has made preambles unnecessary for parliamentary purposes. For cases where judges have confused the preamble with the long title see PARA 1264 note 4 ante. There is indeed a similarity between them as guides to legislative intent.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/(iii) Amendable Descriptive Components of an Act/1266. Purpose clause.

## **1266. Purpose clause.**

A purpose clause is an express statement of the legislative intention. Such a clause is optional, but when present is included in the body of the Act. It may apply to the whole or a part of the Act and serves a function similar to that of a preamble<sup>1</sup> or recital<sup>2</sup>. Although called a 'clause' it is normally a section or subsection<sup>3</sup>. A purpose clause is one of the amendable descriptive components of an Act<sup>4</sup>.

1 As to the preamble see PARA 1265 ante.

2 As to the recital see PARA 1267 post.

3 As to the use of the purpose clause in statutory interpretation see the description of the functional construction rule in PARA 1393 post; and see also PARA 1405 post. For examples of purpose clauses see the Public Health Acts Amendment Act 1890 s 51 (repealed); the Finance Act 1936 s 18 (repealed) (referred to in *Latilla v IRC* [1942] 1 KB 299 at 303); the Health and Safety at Work etc Act 1974 s 1 (amended by the Employment Protection Act 1975 ss 116, 125(3), Sch 15 para 1, Sch 18; prospectively amended by the Environmental Protection Act 1990 s 162(2), Sch 16 Pt I as from a day to be appointed under s 164(3)); the Health Services Act 1976 s 2(1) (repealed); the Income and Corporation Taxes Act 1988 s 488(1) (the predecessor of which was referred to in *Page (Inspector of Taxes) v Lowther* (1983) 57 TC 199, CA); the Income and Corporation Taxes Act 1988 s 739 (the predecessor of which was referred to in *Vestey v IRC (Nos 1 and 2)* [1980] AC 1148 at 1181, [1979] 3 All ER 976 at 991, HL). For an example of a statement of purpose serving instead of a recital of facts see the Nuclear Safeguards and Electricity (Finance) Act 1978 s 1; and FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1341.

4 As to the nature of the amendable descriptive components of an Act see PARA 1263 ante. Most drafters dislike the purpose clause, taking the view that often the aims of legislation cannot usefully or safely be summarised or condensed by such means. A political purpose clause is no more than a manifesto, which may obscure what is otherwise precise and exact. Moreover detailed amendments made to a Bill after introduction may not merely falsify the purpose clause but even render it impracticable to retain any broad description of the purpose. The drafter's view is that the Act should be allowed to speak for itself: see the Report of the Renton Committee: *Preparation of Legislation* (1975; Cmnd 6053) PARA 11.7.

## **UPDATE**

### **1266 Purpose clause**



NOTE 3--1975 Act Sch 15 para 1 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/(iii) Amendable Descriptive Components of an Act/1267. Recital.

## 1267. Recital.

A recital is so called because it recites some relevant matter, often the state of facts that constitutes the mischief the provision is designed to remedy<sup>1</sup>. There may be recitals in this sense within a preamble<sup>2</sup> but the term is usually reserved for introductory words beginning 'Whereas ...' to a unit within an Act, usually a section<sup>3</sup>. An earlier form used the construction 'For as much as ...'<sup>4</sup>. A recital is one of the amendable descriptive components of an Act<sup>5</sup>. It may be combined with a statement of intention, when it is called a purpose clause<sup>6</sup>.

The extent to which a recital in an Act will be treated as proof of the facts recited depends on whether the Act is a public Act or a private Act<sup>7</sup>. If it is a public Act, the admissibility of the recital is unrestricted<sup>8</sup>. If it is a private Act the recital is of no greater value than a recital in a private deed and only those who were parties or privies to the Act are bound by it<sup>9</sup>. In neither case is the recital conclusive and the court is always at liberty to reach a different finding of fact<sup>10</sup>. Nevertheless, a recital of facts in an Act constitutes *prima facie* evidence of them<sup>11</sup>. Further evidence in rebuttal is then admissible<sup>12</sup>.

The courts do not regard themselves as bound by a recital of law in an Act<sup>13</sup>. Parliament is, however, presumed to know the existing state of the law<sup>14</sup>, and such a recital is therefore very strong evidence of what the law is, placing on those who allege that the legislature has made a mistake the burden of proving so<sup>15</sup>.

1 As to construction by reference to the mischief see PARA 1474 post. As to the use of the recital in statutory interpretation see the description of the functional construction rule in PARA 1393 post; and see also PARA 1406 post.

2 As to the preamble see PARA 1265 ante.

3 See eg the Civil Aviation Act 1949 s 8 (repealed); the Statute Law (Repeals) Act 1975 s 1(3). As to the section see PARA 1259 ante. Sometimes judges loosely refer to a recital in this sense as a 'preamble': see eg *Olivier v Buttigieg* [1967] 1 AC 115 at 128, [1966] 2 All ER 459 at 461, PC.

4 See eg the Laws in Wales Act 1535 s 2 (repealed).

5 As to the nature of the amendable descriptive components of an Act see PARA 1263 ante.

6 As to the purpose clause see PARA 1266 ante.

7 As to the distinction between public and private Acts see PARAS 1208-1211 ante.

8 See CIVIL PROCEDURE vol 11 (2009) PARA 890.

9 See *Brett v Beales* (1829) Mood & M 416 at 421; *Taylor v Parry* (1840) 1 Man & G 604 at 619; *Earl of Shrewsbury v Scott* (1859) 6 CBNS 1 at 157; *Edinburgh and Glasgow Rly Co v Linlithgow Magistrates* (1859) 3 Macq 691 at 704, HL; *Polini v Gray, Sturla v Freccia* (1879) 12 Ch D 411 at 432-433, CA, explaining also the reasons for the wider rule at one time adopted by the Committee of Privileges in peerage claims. See also *Earl of Carnarvon v Villebois* (1844) 13 M & W 313 at 332; *Duke of Beaufort v Smith* (1849) 4 Exch 450 at 470; *Cowell v Chambers* (1856) 21 Beav 619. Against strangers, a recital in a private Act is not even sufficient to fix a

person with notice of the facts stated: see *Ballard v Way* (1836) 1 M & W 520 at 529. As to the effect of recitals in deeds see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARAS 217-220.

10 *R v Sutton* (1816) 4 M & S 532 at 542; *R v Greene* (1837) 6 Ad & El 548; *R v Haughton Inhabitants* (1853) 1 E & B 501 at 516; *Merttens v Hill* [1901] 1 Ch 842 at 852. See also *Kent Coast Rly Co v London, Chatham and Dover Rly Co* (1868) 3 Ch App 656; *Locke-King v Woking UDC* (1897) 77 LT 790; *Wyld v Silver* [1963] Ch 243 at 261, [1962] 3 All ER 309 at 317, CA, per Harman LJ and at 268 and 321 per Russell LJ, where a recital in a local Act of 1799 of a right was held to be very strong, although not conclusive, evidence of the existence of that right at that date. Cf Co Litt 19b, where it is said that the rehearsal or preamble of a statute is to be taken for truth, for it cannot be thought that a statute which is made by authority of the whole realm, as well of the King as of the lords spiritual and temporal and of all the commons, will recite a thing against the truth.

11 *R v Sutton* (1816) 4 M & S 532; *A-G v Foundling Hospital* [1914] 2 Ch 154; *Dawson v Commonwealth of Australia* (1946) 73 CLR 157 at 175; *Wyld v Silver* [1963] 1 QB 169 at 187, 194, [1962] 3 All ER 309 at 317, 321, CA; *Neaverson v Peterborough RDC* [1901] 1 Ch 22.

12 See *Deputy Federal Comr of Taxation (NSW) v W R Moran Pty Ltd* (1939) 61 CLR 735 (private Act).

13 *Dore v Gray* (1788) 2 Term Rep 358 at 365; *R v Haughton Inhabitants* (1853) 1 E & B 501 at 516; *Mersey Docks and Harbour Board v Cameron, Jones v Mersey Docks and Harbour Board* (1865) 11 HL Cas 443 at 458; *Merttens v Hill* [1901] 1 Ch 842 at 852; *Headland v Coster* [1905] 1 KB 219 at 231, CA; *Houghton v Fear Bros Ltd and Willsher* [1913] 2 KB 343; *Port of London Authority v Canvey Island Comrs* [1932] 1 Ch 446, CA.

14 See *Young & Co v Royal Leamington Spa Corpn* (1883) 8 App Cas 517 at 526, HL.

15 *R v Treasury Lords Comrs, ex p Brougham and Lord Vaux* (1851) 16 QB 357 at 362.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/(iii) Amendable Descriptive Components of an Act/1268. Short title.

## 1268. Short title.

The short title is a brief description by which an Act may be cited or referred to<sup>1</sup> and is one of the amendable descriptive components of an Act<sup>2</sup>. Sometimes judges confuse the long title of an Act with the short title<sup>3</sup>.

In a modern Act the short title is usually given by the Act itself. The practice is to include a short title clause in common form, either as a section or subsection<sup>4</sup>; and the drafter strives to keep the short title brief, but does not always succeed<sup>5</sup>. Acts have been known to have more than one short title<sup>6</sup>.

Since it became the practice to insert short title clauses in Acts, the short title given has almost invariably ended with the word 'Act', followed by the calendar year in which the Act was passed<sup>7</sup>. Rarely, the year is omitted<sup>8</sup>. The short title formerly included a comma before the calendar year<sup>9</sup> but this was later dropped by direction of the Statute Law Committee<sup>10</sup>.

The fact that, apart from the calendar year, two Acts have identical short titles will be taken as an indication that they are in *pari materia*<sup>11</sup>. Where an Act cites or refers to another Act otherwise than by its short title, the short title may, in any revised edition of the statutes published by authority, be printed in substitution for that citation or reference<sup>12</sup>.

1 As to the citation of Acts see PARA 1253 ante. As to the use of the short title in statutory interpretation see the discussion of the functional construction rule in PARA 1393 post; and see also PARA 1407 post.

2 As to the nature of the amendable descriptive components of an Act see PARA 1263 ante.

3 See PARA 1264 ante.

4 See eg the National Heritage Act 1983 s 43, which reads: 'This Act may be cited as the National Heritage Act 1983'. For early Acts, short titles were given informally by popular attribution, eg the Coventry Act (Maiming) (1670) (22 & 23 Cha 2 c 1) (repealed); Fox's Libel Act (the Libel Act 1792 (32 Geo 3 c 60)); Thellusson's Act (the Accumulations Act 1800 (39 & 40 Geo 3 c 98)) (repealed); Michael Angelo Taylor's Act (the Metropolitan Paving Act 1817 (57 Geo 3 c xxix)) (repealed); Lord Tenterden's Act (the Statute of Frauds Amendment Act 1828 (9 Geo 4 c 14)); Lord Brougham's Act, also known as the Acts of Parliament Abbreviation Act (Interpretation of Acts) (1850) (13 & 14 Vict c 21) (repealed); and Lord Cairns's Act (the Chancery Amendment Act 1858 (21 & 22 Vict c 27)) (repealed). The Conveyancing Act 1881 (44 & 45 Vict c 41) (repealed) was apparently referred to as the 'Drudgery of Conveyancers Relief Act': see *Re Healing Research Trustee Co Ltd* [1992] 2 All ER 481 at 485 per Harman J.

Some older Acts have been given short titles by a Statute Law Reform Act such as the Short Titles Act 1892 (repealed) and the Short Titles Act 1896. The latter supplemented and superseded the Act of 1892 and covered some hundreds of statutes passed between 1351 and 1893: see the Short Titles Act 1896 s 1, Sch 1. These statutory short titles have been sometimes known to be inadequate or misleading; eg in relation to the short title of the Criminal Procedure Act 1865, conferred by the Short Titles Act 1896, Mann LJ said that the Act was 'ineptly titled' since most of its sections apply to civil proceedings also: *Lockheed-Arabia v Owen* [1993] QB 806 at 810, [1993] 3 All ER 641 at 643, CA. The Summary Jurisdiction Act 1848 (repealed) (to which this short title was first given by the Interpretation Act 1889 s 13(6) (repealed)) was commonly known as 'Jervis's Act'.

Many more short titles were conferred on such statutes in 1948: Statute Law Revision Act 1948 s 5, Sch 2. In addition, a small number of short titles were added by the Statute Law (Repeals) Act 1977 s 3, Sch 3; and the Statute Law (Repeals) Act 1978 s 2, Sch 3.

5 See eg the Artisans and Labourers Dwellings Act (1868) Amendment Act (1879) Amendment Act 1880.

6 See eg 9 & 10 Vict c 95 (1846), which is known both as the Small Debts Act 1846 and the County Courts Act 1846 (*Whitter v Peters*, *Pearl v Stewart* [1982] 2 All ER 369 at 373, [1982] 1 WLR 389 at 394, CA); and 14 Geo 3 c 48 which is known both as the Life Assurance Act 1774 and the Gambling Act 1774 (*Mark Rowlands Ltd v Berni Inns Ltd* [1986] QB 211 at 227, [1985] 3 All ER 473 at 480, CA; *Siu Yin Kwan v Eastern Insurance Co Ltd* [1994] 2 AC 199, [1994] 1 All ER 213, PC).

7 In 22 & 23 Geo 5 c 4 the short title given, presumably because this was a weighty constitutional Act with a direct application throughout the Commonwealth, was the Statute of Westminster 1931: see s 12.

8 The Short Titles Act 1896 named 1 Will & Mar Sess 2 c 2 (1689) as simply 'the Bill of Rights'.

9 Ie until the beginning of the session 11 & 12 Eliz 2 (1962): see eg the Judicial Committee Act, 1833, which short title was conferred by the Short Titles Act 1896 s 1, Sch 1.

10 See Sir Noel Hutton QC, 'The Citation of Statutes' 82 LQR 24-25. Acts beginning with the Tanganyika Republic Act 1962 are thus given short titles which lack this comma. Moreover earlier Acts originally equipped with a comma in their short title are now said to be correctly cited without one: see eg the citation 'the Judicial Committee Act 1833' in the Tanganyika Republic Act 1962 s 2(5). The authority for this last statement is a note, apparently based on the proposition that commas in Acts are to be disregarded, by the then First Parliamentary Counsel, Sir Noel Hutton QC: see 82 LQR 24-25. It is of doubtful validity however, since the short title to an Act is normally conferred either by the Act itself or by a Short Titles Act or other Statute Law Revision Act. No person or body is empowered to override an Act of Parliament, though the point is scarcely worthy of the special enactment required to meet it. The practice of omitting the comma is followed as a matter of style in this title and this work, except in the example given in note 9 supra.

11 *R v Wheatley* [1979] 1 All ER 954 at 957, [1979] 1 WLR 144 at 147, CA. As to Acts in pari materia see PARA 1220 ante.

12 Statute Law Revision Act 1893 s 3.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/(iii) Amendable Descriptive Components of an Act/1269. Statutory examples.

## 1269. Statutory examples.

Examples or illustrations are uncommon in English Acts, but are not unknown<sup>1</sup>. Where an Act includes an example this is one of the amendable descriptive components of the Act<sup>2</sup>. Statutory examples vary in their form; the most usual type is the parenthetical example, where the legislator turns aside from setting out the rule by means of the usual generalised formula<sup>3</sup>; or the example may be set out as such<sup>4</sup>. The most elaborate examples in modern English legislation are contained in the Consumer Credit Act 1974<sup>5</sup>.

Examples are occasionally used in subordinate legislation<sup>6</sup>.

1 See eg the Agriculture (Miscellaneous Provisions) Act 1976 s 7(1). The Renton Committee suggested that more use be made of examples 'showing how a Bill is intended to work in particular situations': Report of the Renton Committee: *Preparation of Legislation* (1975; Cmnd 6053) PARA 20.2(9).

2 As to the nature of the amendable descriptive components of an Act see PARA 1263 ante. As to the use of examples in statutory interpretation see the discussion of the functional construction rule in PARA 1393 post; and see also PARA 1408 post.

3 See eg the Occupiers' Liability Act 1957 s 2(3), (4); the Courts and Legal Services Act 1990 s 17(3)(c)(iii).

4 See eg the Sex Discrimination Act 1975 s 29(2); the Race Relations Act 1976 s 20(2).

5 See the Consumer Credit Act 1974 s 188, Sch 2.

6 See eg the University Elections (Single Transferable Vote) Regulations 1918, SR & O 1918/1348, Sch 1 (revoked).

## UPDATE

### 1269 Statutory examples

NOTE 3--Courts and Legal Services Act 1990 s 17(3)(c)(iii) amended: Access to Justice Act 1999 Sch 4 para 46.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/ (iv) Unamendable Descriptive Components of an Act/1270. Nature of unamendable descriptive components.

## (iv) Unamendable Descriptive Components of an Act

### 1270. Nature of unamendable descriptive components.

An unamendable descriptive component of an Act is a component which describes the whole or some part of the Act and was not subject to amendment (as opposed to a mere printing correction) when the Bill for the Act was going through Parliament<sup>1</sup>. The following are unamendable descriptive components: chapter number, date of passing, enacting formula, words of grant (in financial Acts only), heading, sidenote or marginal note and punctuation<sup>2</sup>. Judges have sometimes said that unamendable descriptive components are not part of the Act<sup>3</sup>; but the entire instrument is put out by Parliament as its Act and must be accepted as such<sup>4</sup>. Under the functional construction rule, the significance to be given by the interpreter to any component of an Act must be assessed in conformity with its legislative function as such a component<sup>5</sup>.

1 As to the making of printing corrections to Bills by parliamentary clerks see PARA 1241 ante.

- 2 See PARAS 1271-1277 post.
- 3 Cf para 1263 ante.
- 4 See PARA 1256 ante.
- 5 As to the functional construction rule see PARA 1393 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/ (iv) Unamendable Descriptive Components of an Act/1271. Chapter number.

### **1271. Chapter number.**

Every Act bears a chapter number<sup>1</sup>, which is one of the unamendable descriptive components of the Act<sup>2</sup>. The chapter numbers of pre-1963 Acts run from the beginning of the parliamentary session in which they were passed, beginning at chapter 1. Acts passed after 1962 are numbered from the start of the calendar year, beginning at chapter 1. On the Queen's Printer's copies of Acts, the calendar year and chapter number appear at the head.

Where two or more Acts receive assent by the same letters patent, chapter numbers are allocated according to the order in which the short titles are set out in the schedule to the letters patent<sup>3</sup>. Accordingly, where Acts are shown as receiving royal assent on the same day, the chapter number shows the deemed order of passing<sup>4</sup>.

An Act passed before the year 1963 was numbered as a chapter of the 'statute book of the session', that is the portion of the entire statute book that was enacted in the parliamentary session within which the Act was passed<sup>5</sup>. Until 1940, the official volumes of Acts were organised on a sessional, rather than an annual, basis<sup>6</sup>. This meant that the 'statute book of a session', beginning at chapter 1 and ending with the concluding chapter of the session, was published as a whole in one or more volumes. Starting with the year 1940, the official volumes of Acts now contain only those passed in the calendar year in question.

The Acts of Parliament Numbering and Citation Act 1962 brought to an end the ancient system of numbering Acts as chapters of the 'statute book of a session'<sup>7</sup>.

The type face used for a chapter number is the only indication to the reader as to whether the Act in question is a public general Act, a local Act or a private Act. For a public general Act, the chapter number is in large arabic figures, whereas it is in small roman figures for local Acts (including Provisional Order Confirmation Acts) and small italicised arabic figures for personal Acts (if printed)<sup>8</sup>.

Where another Act is referred to in an Act, the calendar year and chapter number are given in the margin.

- 1 As to use of the chapter number in statutory interpretation see PARA 1410 post.
- 2 As to the nature of the unamendable descriptive components of an Act see PARA 1270 ante.
- 3 As to royal assent procedure see PARLIAMENT vol 34 (Reissue) PARAS 833-835; Bennion, *Statutory Interpretation* (2nd Edn, 1992) ss 37-42.
- 4 See PARA 1289 note 4 post.

5 Under this system, each Act bore in abbreviated form the regnal year or years identifying the session in which it was passed, eg '10 & 11 Eliz 2'. This was followed by the chapter number, eg 'c 1'. As to the meanings of references to the session and regnal year or years see PARA 1245 note 5 ante.

6 See PARA 1250 ante.

7 See the Acts of Parliament Numbering and Citation Act 1962 s 1. The chapter numbers assigned to Acts of Parliament passed in the year 1963 and every subsequent year are assigned by reference to the calendar year and not the session, in which they are passed; and any such Act may, in any Act, instrument or document, be cited accordingly: s 1. The practice of numbering statutes by reference to the regnal year or years during which the Parliamentary session took place in which they were passed led to much confusion: see 236 HL Official Report (5th series), 25 January 1962, col 990.

8 This guide is not always reliable in the case of earlier Acts. As to the chapter numbers of these see also PARA 1210 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/ (iv) Unamendable Descriptive Components of an Act/1272. Date of passing.

### **1272. Date of passing.**

The date of passing of an Act<sup>1</sup> appears in square brackets after the long title and is one of the unamendable descriptive components of the Act<sup>2</sup>. The date of passing is inserted in accordance with a duty imposed by the Acts of Parliament (Commencement) Act 1793<sup>3</sup>. This requires the Clerk of the Parliaments<sup>4</sup>, in the case of every Act passed since 8 April 1793, to indorse (in English) immediately after the title<sup>5</sup> of such Act, the day, month and year when it was passed and received the Royal Assent; and such indorsement is taken to be a part of that Act<sup>6</sup>.

The main significance of the date of passing or assent is that, unless the contrary intention appears, it is also the date of commencement of the Act<sup>7</sup>.

1 As to the passing of an Act see PARA 1278 post.

2 As to the nature of the unamendable descriptive components of an Act see PARA 1270 ante.

3 1e 33 Geo 3 c 13. The short title of this Act was conferred by the Short Titles Act 1896.

4 As to the Clerk of the Parliaments see PARLIAMENT vol 78 (2010) PARA 855.

5 1e the long title: see PARA 1264 ante.

6 Acts of Parliament (Commencement) Act 1793. The passing of the Act and the receiving of royal assent are in fact the same thing: see PARA 1278 post. It is unclear whether 'receiving' royal assent would mean, in the unlikely event of the dates being different, the signification or communication of assent; but it would appear to mean the latter. As to the distinction between the signification and communication of assent see Bennion, *Statutory Interpretation* (2nd Edn, 1992) s 37; and as to royal assent see PARA 1241 ante; and PARLIAMENT vol 34 (Reissue) PARAS 833-835.

7 See PARA 1279 post. As to the priority between two Acts passed on the same day see PARA 1271 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/ (iv) Unamendable Descriptive Components of an Act/1273. Enacting formula.

### 1273. Enacting formula.

The enacting formula or purview of an Act is the verbal formula expressing the Act's nature as a command of the sovereign legislature, namely the Queen in Parliament<sup>1</sup>. It is one of the unamendable descriptive components of the Act<sup>2</sup>.

For public general Acts other than those passed under the Parliament Acts 1911 and 1949<sup>3</sup> the formula is: 'Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled and by the authority of the same, as follows:'. For an Act passed under the Parliament Acts 1911 and 1949 the formula is: 'Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Commons in this present Parliament assembled, in accordance with the provisions of the Parliament Acts 1911 and 1949 and by the authority of the same, as follows:'<sup>4</sup>.

The enacting formula immediately follows the long title and date of passing unless there is a preamble<sup>5</sup>, when it follows that (in which case 'therefore' is inserted before 'enacted'); however in the case of certain statutes of a financial nature, the enacting formula is preceded by words of grant<sup>6</sup>.

The enacting formula is now purely formal. Since, except as mentioned above, its wording does not vary, it has no effect on the interpretation of the Act's provisions apart from indicating the type of Act<sup>7</sup>.

1 In any revised edition of the statutes published by authority the enacting formula may be omitted: Statute Law Revision Act 1948 s 3(1)(a).

2 As to the nature of the unamendable descriptive components of an Act see PARA 1270 ante.

3 See PARAS 1245-1246 ante.

4 Parliament Act 1911 s 4(1) (amended by the Parliament Act 1949 s 2(2)).

5 As to the preamble see PARA 1265 ante.

6 As to such enactments and the words of grant see PARA 1274 post.

7 The enacting words of the earliest statutes were *Purveu est* or *Provisum est*, respectively law French and Latin versions of the formula 'It is provided'; but there was no uniformity. When in the fourteenth century the House of Commons became established as an element in the making of statutes, the present formula was gradually developed. The Laws in Wales Act 1535 (repealed) furnishes a typical late transitional example: '... His Highness ... hath by the deliberate advice consent and agreement of the Lords Spiritual and Temporal and the Commons, in the present Parliament assembled and by the authority of the same, ordained enacted and established ...'. As to the attitude of the courts to early documents in which the consents are not recited see PARA 1202 ante. In statutes passed before 1850, each separate enactment was preceded by the words 'And be it enacted', or 'And be it further enacted', but this is no longer necessary, for it is provided that each section of an Act is to have effect as a substantive enactment without introductory words: see the Interpretation Act 1978 s 1.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/ (iv) Unamendable Descriptive Components of an Act/1274. Words of grant.

### 1274. Words of grant.

In Acts originating as Bills introduced into the House of Commons pursuant to financial resolutions<sup>1</sup>, the enacting formula<sup>2</sup> is preceded by words of grant addressed to the Sovereign. These recite the resolution by which the introduction of the Bill was authorised<sup>3</sup>.

The words of grant, which among other things derive from and emphasise the dominant role of the House of Commons in financial matters, are not strictly part of the enacting formula although, for the purposes of parliamentary procedure, they are classed with it and not with the preamble (if any)<sup>4</sup>.

1 As to the procedure for introducing such Bills see PARLIAMENT vol 78 (2010) PARA 1054; and Erskine May's Parliamentary Practice (21st Edn, 1989), 718-720. As to the Bills required to be founded on resolutions see PARA 1223 ante.

2 As to the enacting formula see PARA 1273 ante.

3 The exact formula varies with the different types of Bill. In a Finance Bill it runs: 'Most Gracious Sovereign, We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom in Parliament assembled, towards raising the necessary supplies to defray your Majesty's public expenses and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted and ...'. In other types of Bill, there are certain differences of detail and the words from 'towards' to 'hereinafter mentioned' are replaced by an appropriate descriptive passage. If the Bill contains a preamble (see PARA 1265 ante), that is inserted after the words 'Most Gracious Sovereign' and 'Now' is inserted before 'We'.

4 Thus, neither enacting formula nor words of grant are capable of amendment, for they form part of the framework of the Bill: see 635 HC Official Report (5th series), 1961, cols 805-806.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/ (iv) Unamendable Descriptive Components of an Act/1275. Heading.

## **1275. Heading.**

In modern Acts of any great length, the sections<sup>1</sup> are divided into groups and for each group (sometimes called a fasciculus) the subject matter is indicated by a brief heading<sup>2</sup>. Where the topics dealt with by the various groups are closely related, the division is normally effected by means simply of italicised cross-headings<sup>3</sup>. Where, however, the Act embraces a number of more distinct themes, it is the practice to divide it into Parts<sup>4</sup>. A Schedule may be treated similarly<sup>5</sup>.

A heading within an Act, whether contained in the body of the Act or a Schedule, is part of the Act<sup>6</sup>. Parliament does not, however, consider the headings, as such, at any stage of the proceedings on a Bill (except that they are of course present before it in the text of the Bill or amendment under consideration) and they are not regarded as forming part of the Bill in the sense of being open to formal amendment by the House considering the Bill<sup>7</sup>. A heading is therefore one of the unamendable descriptive components of the Act<sup>8</sup>.

Judges have been known to refer to the long title of an Act as a 'heading', but this is an obvious inaccuracy<sup>9</sup>.

1 As to the section see PARA 1259 ante.

2 As to the use of headings in statutory interpretation see PARA 1411 post.



3 See eg the Agricultural Training Board Act 1982.

4 These are numbered and named in roman figures and capital letters respectively. A Part is sub-divided where appropriate either by italicised cross-headings or into Chapters which are numbered and named in the same way and may themselves be subdivided by italicised cross-headings: see eg the Transport Act 1980; the Companies Act 1985.

5 As to the Schedule see PARA 1260 ante.

6 See PARA 1256 ante. This is emphasised by the fact that sometimes a later Act amends a heading (see eg the Race Relations Act 1976 s 79, Sch 4 para 1; the Health Services Act 1980 s 1, Sch 1 para 78) and may even insert a heading.

7 Erskine May's Parliamentary Practice (21st Edn, 1989) 490; *R v Hare* [1934] 1 KB 354 at 355, CCA, per Avory J; *Re Carlton* [1945] Ch 280 at 284, [1945] 1 All ER 559 at 562 per Cohen J. As to printing corrections by the parliamentary clerks see PARA 1241 ante.

8 As to the nature of the unamendable descriptive components of an Act see PARA 1270 ante.

9 For examples of the error see PARA 1264 note 5 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/ (iv) Unamendable Descriptive Components of an Act/1276. Sidenote.

## **1276. Sidenote.**

The content of each section<sup>1</sup> is indicated by a brief sidenote (or marginal note)<sup>2</sup> which is part of the Act<sup>3</sup>. Parliament does not, however, consider the sidenotes, as such, at any stage of the proceedings on a Bill (except that they are of course present before it in the text of the Bill or amendment under consideration)<sup>4</sup>. Sidenotes are not regarded as forming part of a Bill in the sense of being open to formal amendment by the House considering the Bill<sup>5</sup>. A sidenote is therefore one of the unamendable descriptive components of an Act<sup>6</sup>, its status being comparable to that of a heading<sup>7</sup>.

In early Acts a marginal note was in the nature of a précis of the section, often quite lengthy<sup>8</sup>.

1 As to the section see PARA 1259 ante.

2 In some jurisdictions, although not in England and Wales, these are placed as section headings, rather than in the margin. For a general account see Gordon Stewart, 'Legislative Drafting and the Marginal Note' (1995) 16 Stat LR p 21. As to the use of sidenotes in statutory interpretation see PARA 1412 post.

3 See PARA 1256 ante; and cf para 1275 note 6 ante.

4 An exception arises where, as occasionally happens, a new section, complete with sidenote, is inserted by an amendment to an existing Act, or an existing sidenote is amended by a later Act.

5 Erskine May's Parliamentary Practice (21st Edn, 1989) 490; *A-G v Great Eastern Rly Co* (1879) 11 ChD 449 at 461, CA; *Sutton v Sutton* (1882) 22 ChD 511 at 513, CA, per Jessel MR (retracting his remarks in *Re Venour's Settled Estates*, *Venour v Sellon* (1876) 2 ChD 522 at 525); *Wilkes v Goodwin* [1923] 2 KB 86 at 100, CA; *Nixon v A-G* [1930] 1 Ch 566 at 593, CA; *R v Hare* [1934] 1 KB 354 at 355, CCA; *R v Bates* [1952] 2 All ER 842 at 844. The position is different where the sidenote is referred to in the body of the Act (see eg *Re Woking UDC (Basingstoke Canal) Act 1911* [1914] 1 Ch 300 at 322, CA) but this is not good drafting practice. As to printing corrections by the parliamentary clerks see PARA 1241 ante.

6 As to the nature of the unamendable descriptive components of an Act see PARA 1270 ante.

7 As to the heading see PARA 1275 ante.

8 See eg the notes affixed to 2 Geo 3 c 19 (Game) (1762) (repealed). Sometimes a section was equipped with more than one sidenote; for an instance where three sidenotes were provided for one section see the Highway Act 1835 s 78 (as amended).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/1. NATURE OF PRIMARY LEGISLATION/(4) FRAMEWORK AND COMPONENTS OF AN ACT/ (iv) Unamendable Descriptive Components of an Act/1277. Punctuation.

## 1277. Punctuation.

Its punctuation is part of an Act<sup>1</sup> and is one of its unamendable descriptive components<sup>2</sup>. Acts were formerly engrossed on the Parliament Roll<sup>3</sup>, a practice which ceased at the end of 1849<sup>4</sup> and was replaced by the present practice whereby separate vellum copies of each Act are prepared<sup>5</sup>. Judges have frequently stated, quite mistakenly, that punctuation marks were never entered on the Parliament Roll<sup>6</sup>. The fact is that, while some Acts were engrossed on the Roll without punctuation, many did include punctuation marks<sup>7</sup>.

Modern Acts are carefully punctuated by or under the supervision of the drafter. The printer has no part to play and must faithfully reproduce the punctuation found in the vellum copies. Moreover the interpreter is by statute required to treat the published version of the Act, complete with punctuation, as authoritative<sup>8</sup>. Accordingly, in the absence of any indication that a mistake has occurred, the interpreter must take the printed punctuation as part of the Act, for what it is worth<sup>9</sup>. Both public Bills and private Bills are fully punctuated when introduced into Parliament<sup>10</sup>.

Where mistakes in punctuation occur, judges show little hesitation in rectifying them<sup>11</sup>.

1 See PARA 1256 ante. As to the use of an Act's punctuation in statutory interpretation see PARA 1413 post.

2 As to the nature of the unamendable descriptive components of an Act see PARA 1270 ante.

3 See PARA 1248 ante.

4 *Claydon v Green* (1868) LR 3 CP 511 at 522.

5 See PARA 1248 ante.

6 *Doe d Willis v Martin* (1790) 100 ER 882 at 897; *R v Oldham* (1852) 169 ER 587 at 588; *Barrow v Wadkin (No 2)* (1857) 24 Beav 327 at 330; *Stephenson v Taylor* (1861) 1 B & S 101 at 106; *Claydon v Green* (1868) LR 3 CP 511 at 522; *Duke of Devonshire v O' Connor* (1890) 24 QBD 468 at 478; *IRC v Hinchy* [1960] AC 748 at 765, [1960] 1 All ER 505 at 510, HL; *Hanlon v The Law Society* [1981] AC 124 at 197, [1980] 2 All ER 199 at 221, HL.

7 Eg when the enrolment of the Treason Act 1351 was examined by the judges in *R v Lynch* [1903] 1 KB 444 and *R v Casement* (1917) 86 LJKB (NS) 467 at 484-486, CCA, it was found that the enrolled Act was punctuated.

8 See the Interpretation Act 1978 s 19(1).

9 A punctuation change in a Bill cannot be made by formal amendment, but may be made by what is known as a printing correction: see PARA 1248 ante.

10 See PARA 1212 ante. The judicial statement that 'commas are not part of the draft of Bills laid before Parliament but are inserted at the Queen's Printer's stage of publication' (*Esso Petroleum Co Ltd v Ministry of Defence* [1990] Ch 163 at 166, [1990] 1 All ER 163 at 165 per Harman J) is erroneous.

11 See eg *Allnatt London Properties Ltd v Newton* [1981] 2 All ER 290 at 292 per Sir Robert Megarry V-C ('for the errant semi-colon after the words 'so specified' I have substituted the comma that lucidity demands') (on appeal [1984] 1 All ER 423, CA). Cf *Marshall v Cottingham* [1982] Ch 82 at 88, [1981] 3 All ER 8 at 12.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(1) PASSING, COMMENCEMENT AND DURATION OF AN ACT OR ENACTMENT/(i) Passing and Commencement/1278. Passing of an Act.

## **2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION**

### **(1) PASSING, COMMENCEMENT AND DURATION OF AN ACT OR ENACTMENT**

#### **(i) Passing and Commencement**

##### **1278. Passing of an Act.**

An Act is passed when it receives royal assent<sup>1</sup>. Doubt about this date is avoided by the indorsing of the date on the Act<sup>2</sup>. Before 1793, every statute was regarded as having received royal assent on the first day of the session in which it was passed. Since then royal assent is regarded as given at the beginning of the day on which it is signified and communicated<sup>3</sup>. Accordingly, references in an Act to the passing of any Act are references to the first moment of the day on which the royal assent was given<sup>4</sup>, and not to the date of commencement, where different<sup>5</sup>.

1 *R v Smith, R v Weston*[1910] 1 KB 17, CCA; *Coleridge-Taylor v Novello & Co Ltd*[1938] Ch 608, [1938] 2 All ER 318; revsd without affecting this point [1938] Ch 850, [1938] 3 All ER 506, CA. As to royal assent see PARA 1241 ante; and PARLIAMENT vol 34 (Reissue) PARAS 833-835.

2 See PARA 1272 ante.

3 See PARA 1279 post.

4 *Tomlinson v Bullock*(1879) 4 QBD 230 at 232.

5 *Re Dalzell, ex p Rashleigh*(1875) 2 ChD 9, CA; *Hall v London, Brighton and South Coast Rly Co*(1886) 17 QBD 230, CA; *R v Smith, R v Weston*[1910] 1 KB 17, CCA. See also *Coleridge-Taylor v Novello & Co*[1938] Ch 850, [1938] 3 All ER 506, CA.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(1) PASSING, COMMENCEMENT AND DURATION OF AN ACT OR ENACTMENT/(i) Passing and Commencement/1279. Commencement of an Act or enactment.

##### **1279. Commencement of an Act or enactment.**

The commencement of an Act or enactment<sup>1</sup> occurs when it comes into force<sup>2</sup>. An Act which contains no express provision as to its commencement comes into force at the beginning of the day on which it receives the royal assent<sup>3</sup>.

Promulgation has never been a condition precedent to the coming into operation of statutes<sup>4</sup>. However, to allow persons affected to become aware of a new Act, it is the practice to postpone for a reasonable period the coming into operation of the majority of Acts which directly affect the conduct of individuals or corporate bodies<sup>5</sup>. Different dates may be fixed for the commencement of different provisions of the same Act<sup>6</sup>, or authority may be given to appoint different dates for different provisions or for different purposes<sup>7</sup>. The minister entrusted by Parliament with the power to make a commencement order in relation to an Act may not lawfully decide that no such order shall be made<sup>8</sup>.

All commencement provisions should be grouped at the end of the Act, unless this is impracticable<sup>9</sup>.

The precise moment at which an Act, or a particular provision of an Act, takes effect is the beginning of the day on which it comes into force<sup>10</sup>. Where an Act or provision has extra-territorial effect<sup>11</sup>, the moment of its commencement is determined for any particular territory by reference to local time<sup>12</sup>. Although it may be unobjectionable to adjourn a case to await the coming into force of procedural changes, a court has no power effectively to alter the commencement date appointed for an enactment changing the substantive law by adjourning the proceedings until after that date<sup>13</sup>.

1 For the meaning of 'enactment' see PARA 1232 ante.

2 Interpretation Act 1978 ss 5, 22(1), Sch 1, Sch 2 para 4(1)(b). For the meaning of 'Act' see PARA 1232 note 2 ante.

3 For Acts passed after 1889 this is provided by *ibid* ss 4(b), 22(1), Sch 2 para 3. For details of the royal assent procedure see the Royal Assent Act 1967; and Bennion *Statutory Interpretation* (2nd Edn, 1992) ss 37-42. Before 1793, every Act was regarded as having received the royal assent on the first day of the session in which it was passed (for, by a legal fiction, a session was deemed to constitute a single day), and the operation of an Act which contained no express provision as to commencement therefore related back to that day: see 4 Co Inst 25; *Panter v A-G* (1772) 6 Bro Parl Cas 486 at 490; and the preamble to the Acts of Parliament (Commencement) Act 1793. This rule led to inconvenience and injustice. The judges had to take notice of the parliamentary timetable, instead of being able to discover from each Act the date of its commencement: *R v Wilde* (1670) 1 Lev 296. A person might be convicted of an offence which had not been created at the time of its commission (*R v Thurston* (1662) 1 Lev 91), and a transaction might be invalidated for failure to comply with requirements which did not exist when it was completed, and compliance with which had even become impossible by the date the Act was passed (*Latless and Patten v Holmes* (1792) 4 Term Rep 660). As to the indorsement of the date of the royal assent see PARA 1272 ante.

4 As to promulgation of Acts see PARA 1251 note 12 ante. Cf the Foreign Enlistment Act 1870 s 3, which required the Act to be proclaimed by the governor in every British possession outside the United Kingdom, and provided that it should come into operation in each such possession only after proclamation. Statutes extending to the Channel Islands are sent to the Royal Courts of Jersey and Guernsey to be registered, but registration is not a condition precedent to their coming into operation: see COMMONWEALTH vol 13 (2009) PARA 791.

5 A provision which itself fixes the date normally does so by reference to a period beginning with the passing of the Act in which the provision is contained: see eg the Law of Property (Miscellaneous Provisions) Act 1989 s 5(3), (4). As to the construction of a provision fixing such a period, see *Hare v Gocher* [1962] 2 QB 641, [1962] 2 All ER 763, DC; *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899, [1967] 2 All ER 900, CA. Commencement may also be fixed by the naming of a specific date or by reference to the occurrence of a specified event: see eg the Foreign Enlistment Act 1870 s 3. A fixed period of postponement of one, two or three months is commonly provided where immediate operation of the Act is not required: see eg the Welsh Language Act 1993 s 36(1). A longer period of postponement may be provided: see eg the Health Authorities Act 1995 ss 1(2), 2(3), 4(2), 5(2). An alternative method is to provide for commencement to be fixed by ministerial order (see eg the Law of Property (Miscellaneous Provisions) Act 1989 s 5(1), (2)); or for commencement to be from a day to be appointed by ministerial order for some named purpose (see eg the Finance Act 1991 s 110(6), (7); and STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1006 ante). This can, however, lead to difficulties in ascertaining what the law is at any one time, particularly where different provisions of an Act are brought into force on different dates. As to failure to make a commencement

order see the text and note 8 infra. For an example of an 'appointed day' provision of unusual formality see the Easter Act 1928 s 2(2) (still not yet activated). For an example of an order limiting the effect of a provision see *Osgerby v Rushton* [1968] 2 QB 466, [1968] 2 All ER 1196, DC.

6 See eg the Road Traffic Act 1960 s 270, Sch 20 (amended by the Road Traffic Act 1962 s 51(2), Sch 5; and by the Road Traffic Regulation Act 1967 ss 109, 110(1), Schs 6, 7).

7 See eg the Leasehold Reform, Housing and Urban Development Act 1993 s 188(2); the Health Authorities Act 1995 s 8(1). As to the effect of particular provisions postponing commencement see TIME.

8 See *R v Secretary of State for the Home Department, ex p Fire Brigades Union* [1995] 2 All ER 244, [1995] 2 WLR 464, HL.

9 See 79 LS Gaz (28 July 1982) 968. Where a section includes a commencement provision applying to other parts of the Act, the sidenote must include the word 'commencement'; if commencement provisions are complex they must be put in a separate section or Schedule; and where possible, commencement dates for particular provisions should be specified in the Act itself: 79 LS Gaz 968.

10 For Acts passed after 1889 and expressed to come into operation on a particular day, this is provided by the Interpretation Act 1978 s 4(a), Sch 2 para 3. Section 4(a) applies to subordinate legislation made at any time before the commencement of the Interpretation Act 1978 as it applies to Acts passed at that time: s 23(1), Sch 2 para 6. Where an Act commences on the date of royal assent, it has been held that the Act has effect from the first moment of that day: see *Tomlinson v Bullock* (1879) 4 QBD 230 at 232. The terms used in this case appear to support the wider proposition stated in the text, and the view that the Interpretation Act 1889 s 36(2) (repealed), which is consolidated in the Interpretation Act 1978 s 4(a), merely reproduced the existing position for certain Acts.

11 See PARA 1318 et seq post.

12 *R v Logan* [1957] 2 QB 589, [1957] 2 All ER 688. The Army Act 1955 (see ARMED FORCES), which came into force on 1 January 1957, was in force in Hong Kong at 2.30 am on that day, Hong Kong standard time, even though by Greenwich mean time it was then only 6.30 pm on the previous day, so that the Act had not yet come into operation in England. The Australia Act 1986 was brought into force at 5 am GMT on 3 March 1986 by the Australia Act 1986 (Commencement) Order 1986, SI 1986/319, made under the Australia Act 1986 s 17(2), providing an exception to the usual rule that commencement is at the beginning of a day; for another such exception see His Majesty's Declaration of Abdication Act 1936 s 1(1).

13 *R v Walsall Justices, ex p W (a minor)* [1990] 1 QB 253, [1989] 3 All ER 460, DC.

## UPDATE

### 1279 Commencement of an Act or enactment

NOTES 4, 5--Foreign Enlistment Act 1870 s 3 repealed: Statute Law (Repeals) Act 2008.

NOTE 6--1960 Act s 270, Sch 20 (as amended) repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(1) PASSING, COMMENCEMENT AND DURATION OF AN ACT OR ENACTMENT/(i) Passing and Commencement/1280. Exercise of powers between passing and commencement.

### 1280. Exercise of powers between passing and commencement.

Where an Act passed after 1889, or any provision of such an Act, does not come into force immediately on its passing, and it confers power to make subordinate legislation, or to make appointments, give notices, prescribe forms or do any other thing for the purposes of the Act, then, unless the contrary intention appears, the power may be exercised, and any instrument

made under it may be made so as to come into force, at any time after the passing of the Act so far as may be necessary or expedient for the purpose of (1) bringing the Act or any provision of the Act into force<sup>1</sup>; or (2) giving full effect to the Act or any such provision at or after the time when it comes into force<sup>2</sup>. An Act may contain express provision extending the circumstances in which powers may be exercised between passing and commencement.

It is not permissible for the courts otherwise to anticipate the coming into force of an Act<sup>3</sup>.

1 Interpretation Act 1978 ss 13(a), 22(1), Sch 2 para 3.

2 Ibid s 13(b). For the meaning of 'Act' and 'subordinate legislation' see PARA 1232 note 2 ante. As to the scope of s 13 see *R v Minister of Town and Country Planning, ex p Montague Burton Ltd* [1951] 1 KB 1 at 6, [1950] 2 All ER 282 at 285, CA, where it was held that its predecessor in the Interpretation Act 1889 was not confined to authorising such acts as appointing the day on which the Act is to come into operation, but extended to the taking of all necessary steps to set up the machinery for bringing it into force. See also *Usher v Barlow* [1952] Ch 255 at 262, [1952] 1 All ER 205 at 214, CA, where it was held that the provision extends to 'any matter without which the Act can come into operation, but with which the Act will come into operation more conveniently or effectively'. In pre-1890 statutes, express provision enabling powers to be so exercised was frequently inserted.

3 See *Wilson v Dagnall* [1972] QB 509, [1972] 2 All ER 44, CA; and cf *R v Walsall Justices, ex p W (a minor)* [1990] 1 QB 253, [1989] 3 All ER 460, DC (cited in PARA 1279 note 13 ante).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(1) PASSING, COMMENCEMENT AND DURATION OF AN ACT OR ENACTMENT/(ii) Duration/1281. Duration of temporary Acts.

## (ii) Duration

### 1281. Duration of temporary Acts.

The period for which a temporary enactment<sup>1</sup> is to continue in force may be specified in the enactment itself, whether by reference to a particular date<sup>2</sup> or by reference to the occurrence of an event<sup>3</sup>, or the period may be left to be determined by order<sup>4</sup>. Temporary Acts must be distinguished from those which impose a limit of time, not on their own duration, but on the exercise of the powers they confer<sup>5</sup>. Whether an Act be permanent or temporary, its operation may be suspended by a subsequent Act, or under powers conferred by an Act<sup>6</sup>.

When a Bill for the continuance of a temporary Act is introduced in the session in which the Act will expire, but does not receive the royal assent until after its expiry, the Bill nevertheless then takes effect, unless it contains express provision to the contrary, from the time of expiry of the Act<sup>7</sup>. When an Act provides for the continuance for a limited time of an earlier Act which was in part temporary and in part permanent, it is a question of construction whether the effect is to render the whole of the earlier Act temporary<sup>8</sup>.

A temporary Act or enactment may also be made permanent by subsequent legislation<sup>9</sup>.

1 As to the distinction between permanent and temporary Acts see PARA 1216 ante; as to repeal by temporary Acts see PARA 1304 post; and as to the effect of the expiry of a temporary Act see PARA 1314 post.

2 See eg the Iran (Temporary Powers) Act 1980 s 2(3) (spent).

3 As in the case of the Sea Fisheries Act 1868: see s 4 (repealed), which provided that the Act should cease to apply to French subjects etc on the determination, by the giving of notice, of the scheduled convention between Britain and France.

4 See eg the Imprisonment (Temporary Provisions) Act 1980 s 2 (repealed), which contains a power to extend the duration of the temporary provisions of that Act.

5 For an example of such an Act see the Coastal Flooding (Emergency Provisions) Act 1953 s 1 (repealed). These Acts are not themselves temporary, any more than are Acts the provisions of which cannot in the nature of things remain operative for ever. Whether or not their force is then completely spent, they remain in being notwithstanding that the powers they confer have become incapable of exercise.

6 See PARA 1315 post.

7 See the Acts of Parliament (Expiration) Act 1808. The Act provides, however, that nothing in it is to cause any person to suffer any punishment, penalty or forfeiture by means of any contravention of the expiring Act which he may have committed between its expiry and the date of passing of the Act by which it is continued.

8 *Prices of Wine* (1618) Hob 215; *Houghton v Fear Bros Ltd and Willsher* [1913] 2 KB 343.

9 See eg the Population (Statistics) Act 1960 s 1(1), giving permanent effect to the Population (Statistics) Act 1938, which was originally limited to expire on 20 June 1948 (see s 7(4) (repealed)) and was continued in force annually thereafter by the Expiring Laws Continuance Acts, the most recent of which, the Expiring Laws Continuance Act 1959 (repealed) continued the 1938 Act in force until 31 December 1960.

## UPDATE

### 1281 Duration of temporary Acts

NOTE 9--1960 Act s 1(1) repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(1) PASSING, COMMENCEMENT AND DURATION OF AN ACT OR ENACTMENT/(ii) Duration/1282. Desuetude.

### 1282. Desuetude.

An Act or provision of an Act does not lapse or become inoperative through lack of use or passage of time, even though over a long period it is disobeyed and not enforced<sup>1</sup>. The same necessarily applies to a right conferred by statute: it does not cease to exist merely because it has not been exercised for a long period<sup>2</sup>. Nevertheless an Act may in practice be a dead letter<sup>3</sup>.

Since the doctrine of desuetude does not apply to Acts of the United Kingdom Parliament<sup>4</sup>, such an Act may be unexpectedly brought back to life<sup>5</sup>.

1 The contrary was put forward in the fourteenth century (see *R v Bishop of Lincoln* (1345) YB 19 Edw 3 (RS) 164 at 170) but later rejected (see Co Litt 81b; *White v Boot* (1788) 2 Term Rep 274 at 275; *Leigh v Kent* (1789) 3 Term Rep 362 at 364; *Stewart v Lawton* (1823) 1 Bing 374 at 375; *The India* (1864) Brown & Lush 221 at 224; *Hebbert v Purchas* (1871) LR 3 PC 605 at 650). See also *Dublin Corp v Trinity College* (1903) 88 LT 305, HL; *Lance v Lance and Gardiner* [1958] P 134n at 136-137n, [1958] 1 All ER 388n at 390n; *Wyld v Silver* [1963] Ch 243, [1962] 3 All ER 309, CA; *R v East Sussex Quarter Sessions, ex p New Hove Albany Club* (1970) 115 Sol Jo 143, DC.

2 Co Litt 115a; *Edinburgh and Dalkeith Rly Co v Wauchope* (1842) 8 Cl & Fin 710, HL; *Manchester Ship Canal Co v Manchester Racecourse Co* [1901] 2 Ch 37 at 50, CA; *Midlothian County Council v Pumpherson Oil Co Ltd and Oakbank Oil Co Ltd* (1903) 6 F 387; *A-G v HRH Prince Ernest Augustus of Hanover* [1957] AC 436, [1957] 1 All ER 49, HL. In the last-mentioned case the Attorney General, in the course of argument in the court below ([1956] Ch 188 at 207-208, [1955] 3 All ER 647 at 655-656, CA), expressly disclaimed reliance on any argument that the statute in question ((1705) 4 Anne c 16) was a 'dead letter'.

3 This may even apply to a relatively modern Act if it falls into disuse or is not applied as intended (see eg Bennion, *The Sex Disqualification (Removal) Act; Sixty Inglorious Years*, 129 NLJ 1088; and comments thereon in 130 NLJ 22). As to the restrictive application by the courts of obsolescent Acts see *Dobbs v Grand Junction Waterworks* (1882) 10 QBD 337 at 355; *Spencer v Hemmerde* [1922] 2 AC 507 at 519; *Imperial Tobacco Ltd v A-G* [1979] QB 555 at 586, [1979] 2 All ER 592 at 609, CA (on appeal [1981] AC 718, [1980] 1 All ER 866, HL). See further PARA 1437 note 2 post.

4 Under Scots law, however, the doctrine of desuetude does apply to Acts of the Scottish Parliament: see Bennion, *Statutory Interpretation* (2nd Edn, 1992) 212.

5 Gladstone appointed suffragan bishops under the statute 26 Hen 8 c 14 (1534) after a lapse of nearly three centuries: see Craies, *Statute Law* (7th Edn, 1971) 406n.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(2) RETROSPECTIVITY/1283. Relation of an enactment to past law and fact.

## (2) RETROSPECTIVITY

### 1283. Relation of an enactment to past law and fact.

An amending enactment is generally presumed to change the relevant law only from the time of the enactment's commencement<sup>1</sup>. In the absence of a clear indication of a contrary intention in an amending enactment, the substantive rights of the parties to an action thus fall to be determined by the law as it existed when the action was commenced<sup>2</sup>; and this is so whether the law is changed before the hearing of the case at first instance or while an appeal is pending<sup>3</sup>. However an amending enactment may say, expressly or by implication, that its effect is retrospective<sup>4</sup>.

A declaratory enactment, since it does not change the relevant law, operates from the commencement of that law (where it is statute law) or from an indefinite time (where it is common law or other unenacted law)<sup>5</sup>.

1 See PARA 1433 post.

2 *Hitchcock v Way* (1837) 6 Ad & El 943 at 951-952; *Re Joseph Suche & Co Ltd* [1875] 1 ChD 48; *Re Waverley Type Writer, d'Esterre v Waverley Type Writer* [1898] 1 Ch 699; *R v Southampton Income Tax Comrs, ex p Singer* [1916] 2 KB 249 at 259; *Re Clemmons Aluminium Ltd* (1924) 41 TLR 138; *Re Snowdown Colliery Co Ltd, South Eastern Coalfield Extension Co Ltd v Snowdown Colliery Co Ltd* (1925) 94 LJ Ch 305, CA. Cf *Re Anglo-French Co-operative Society Ltd, ex p Pelly (No 2)* (1884) 50 LT 754; *Kemp v Wright* [1895] 1 Ch 121, CA. See further *Marsh v Higgins* (1850) 9 CB 551; *Leeds Bank v Walker* (1883) 11 QBD 84; *Re Athlumney, ex p Wilson* [1898] 2 QB 547; and cf *Hutchinson v Jauncey* [1950] 1 KB 574 at 578-579, [1950] 1 All ER 165 at 167-168, CA; *Jonas v Rosenberg* [1950] 2 KB 52, [1950] 1 All ER 296, CA; *Re Royse (decd)* [1985] Ch 22 at 29, [1984] 3 All ER 339 at 343, CA. If, however, a statutory provision will work only if it is construed as affecting substantive rights retrospectively, it should be construed as being intended to have that effect: *Williams v Williams* [1971] P 271, [1971] 2 All ER 764; *Chaterjee v Chaterjee* [1976] Fam 199, [1976] 1 All ER 719, CA. Cf *Madden v Madden* [1974] 1 All ER 673, [1974] 1 WLR 247; *Bonning v Dodsley* [1982] 1 All ER 612, [1982] 1 WLR 279, CA. A power to take advantage of a statute may be regarded as a right, although not as an accrued right: *Sifam Electrical Instrument Co Ltd v Sangamo Weston Ltd* [1971] 2 All ER 1074. Cf *Re 14 Grafton Street, London WI* [1971] Ch 935, [1971] 2 All ER 1.

3 *Re A Debtor, ex p Debtor (No 490 of 1935)* [1936] Ch 237 at 243, CA; *A-G v Vernazza* [1960] AC 965 at 978, [1960] 3 All ER 97 at 101, HL. See also eg *Eyre v Wynn-Mackenzie* [1896] 1 Ch 135, CA; *New Brunswick Rly Co v British and French Trust Corp* [1939] AC 1, [1938] 4 All ER 747, HL. Cf *Quilter v Mapleson* (1882) 9 QBD 672, CA; *Stovin v Fairbrass* (1919) 88 LJ KB 1004, CA; *Landrigan v Simons* [1924] 1 KB 509; *Performing Right Society Ltd v Bray UDC* [1930] AC 377, PC. However, see *Squance v Gow* [1974] NI 9 (NI CA).



4 In determining whether such an implication arises, certain presumptions apply: see PARA 1285 post. The term 'retroactive' is sometimes used rather than 'retrospective': see eg *Lord Howard de Walden v IRC* [1942] 1 KB 389 at 398, [1942] 1 All ER 287 at 290, CA, per Lord Greene MR.

5 *R v Dursley Inhabitants* (1832) 3 B & Ad 465; *A-G v Marquis of Hertford* (1849) 3 Exch 670; *A-G v Theobald* (1890) 24 QBD 557; *Jones v Bennett* (1890) 63 LT 705; *Re Lovell and Collard's Contract* [1907] 1 Ch 249; *Smithies v National Assocn of Operative Plasterers* [1909] 1 KB 310 at 319, CA. The respective parts of an enactment which is part amending and part declaratory will be treated accordingly: see eg *Re Ashcroft, ex p Todd* (1887) 19 QBD 186, CA, where the Bankruptcy Act 1883 s 47 (repealed), was held to be retrospective in so far as it re-enacted an earlier avoidance provision but, to the extent that it introduced new matter, was prospective only.

## UPDATE

### 1283 Relation of an enactment to past law and fact

NOTE 2--See *Bairstow v Queen's Moat Houses plc* [1998] 1 All ER 343, CA (no power under Supreme Court Act 1981 s 87(3) (now Senior Courts Act 1981 s 87(3)), in making Rules of Court, to effect implied retrospective amendment of inconsistent primary legislation).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(2) RETROSPECTIVITY/1284. Nature of retrospectivity.

### 1284. Nature of retrospectivity.

The effect of an enactment is said to be retrospective when (1) it changes the relevant law with effect from a time earlier than the enactment's commencement<sup>1</sup>; or (2) it otherwise alters the legal incidents of a transaction or other conduct effected before its commencement<sup>2</sup>; or (3) it confers on any person a power to act with retrospective effect<sup>3</sup>. An enactment is not retrospective, however, merely because a part of the requisites for its action is drawn from a time before it was passed<sup>4</sup>. Where an enactment is intended to be retrospective it applies to pending actions<sup>5</sup>.

1 *West v Gwynne* [1911] 2 Ch 1 at 11-12, CA.

2 *Gardner & Co v Cone* [1928] Ch 955 at 966.

3 See eg *F Hoffmann-La Roche & Co AG v Inter-Continental Pharmaceuticals Ltd* [1965] Ch 795, [1965] 2 All ER 15, CA; *Re WJ King & Sons Ltd's Application* [1976] 1 All ER 770, [1976] 1 WLR 521, CA. Cf *Sabally and N' Jie v A-G* [1965] 1 QB 273, [1964] 3 All ER 377, CA; *Ashby v Secretary of State for the Environment* [1980] 1 All ER 508, [1980] 1 WLR 673, CA; *Grant v Allen* [1980] QB 486, [1980] 1 All ER 720, CA.

4 This statement was embodied in the judgment of Stoughton LJ in *Secretary of State for Social Security v Tunncliffe* [1991] 2 All ER 712 at 723, CA (overruled on grounds not affecting this dictum by *Plewa v Chief Adjudication Officer* [1995] 1 AC 249, [1994] 3 All ER 323, HL), citing *R v St Mary's, Whitechapel, Inhabitants* (1848) 12 QB 120 at 127 per Lord Denman CJ. See also *Master Ladies Tailors Organisation v Minister of Labour and National Service* [1950] 2 All ER 525, [1950] WN 386; *Customs and Excise Comrs v Gallagher Ltd* [1971] AC 43, [1969] 2 All ER 328, HL; *Brindle v HW Smith (Cabinets) Ltd* [1973] 1 All ER 230 at 232, [1972] 1 WLR 1653 at 1658, CA, per Lord Denning MR, and at 234 and 1660-1661 per Megaw LJ; *Comrs of Customs and Excise v Thorn Electrical Industries Ltd* [1975] 3 All ER 881, [1975] 1 WLR 1661, HL; *Alexander v Mercouris* [1979] 3 All ER 305, [1979] 1 WLR 1270, CA.

5 *Hewitt v Lewis* [1986] 1 All ER 927, [1986] 1 WLR 444, CA. See also PARA 1283 note 2 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(2) RETROSPECTIVITY/1285. Presumptions regarding retrospectivity.

### **1285. Presumptions regarding retrospectivity.**

The presumptions that prevail on the question whether by implication<sup>1</sup> an enactment is or is not intended to be retrospective are based initially on the nature of legislation, which gives rise to the general presumption against retrospectivity<sup>2</sup>. Thereafter those presumptions depend on the concept of fairness<sup>3</sup>. It is because of the general presumption against retrospectivity that an enactment will not normally be treated as retrospective even where to do so would not be unfair to any person<sup>4</sup>.

1 As to implied enactments see PARA 1234 ante.

2 See PARA 1433 post. For other presumptions see PARAS 1286-1288 post.

3 See *L'Office Cherifien des Phosphates v Yamashita-Shinnihon Steamship Co Ltd* [1994] 1 AC 486, [1993] 3 All ER 686, CA (revsd [1994] 1 AC 486, [1994] 1 All ER 20, HL); *Secretary of State for Social Security v Tunncliffe* [1991] 2 All ER 712 at 724, CA (overruled on grounds not affecting this point by *Plewa v Chief Adjudication Officer* [1995] 1 AC 249, [1994] 3 All ER 323, HL); *Plewa v Chief Adjudication Officer* supra.

4 See eg *Gardner v Lucas* (1878) 3 App Cas 582, HL; *Williams v Smith* (1859) 4 H & N 559 (transactions not rendered valid by subsequent relaxations of the law).

## **UPDATE**

### **1285 Presumptions regarding retrospectivity**

NOTE 3--See also *Westminster CC v Haywood (No 2)* [2000] 2 All ER 634.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(2) RETROSPECTIVITY/1286. Presumption against doubtful penalisation.

### **1286. Presumption against doubtful penalisation.**

It is a general principle of legal policy that no one should suffer detriment by the application of a doubtful law<sup>1</sup>. Where one of the opposing constructions of an enactment<sup>2</sup> would, without clear words, impose a retrospective law contrary to the general presumption against retrospectivity, that construction is necessarily doubtful<sup>3</sup>, and if the construction put forward also inflicts a detriment on some person, that is a second factor against it<sup>4</sup>.

Accordingly it is to be presumed that an Act creating a new offence, or extending an existing one, is not intended to render criminal an act which was innocent when it was committed, and that an Act increasing the penalties for existing offences is not intended to apply in relation to offences committed before its commencement<sup>5</sup>.

Similarly, fiscal legislation is subject in general to the presumption against retrospection<sup>6</sup>. It has, however, been suggested that retrospection is unobjectionable in the case of provisions directed against tax evasion<sup>7</sup>, and the significance of the presumption in that field may therefore have diminished<sup>8</sup>.

1 See PARA 1456 post.

2 As to the opposing constructions see PARA 1337 post.

3 As to the general presumption against retrospectivity see PARA 1283 note 1 ante.

4 A retrospective enactment inflicts a detriment for this purpose 'if it takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability, in regard to events already past': *Yew Bon Tew v Kenderaan Bas Mara* [1983] 1 AC 553 at 558, [1982] 3 All ER 833 at 835, PC, per Lord Brightman. This follows almost exactly the words of a passage in Craies, *Statute Law* (7th Edn, 1971) 387. Such legislation is frowned on by the European Court of Justice: see Case 63/83 *R v Kirk* [1985] 1 All ER 453, ECJ. See also *Re Athlumney, ex p Wilson* [1898] 2 QB 547 at 551; *Smith v Callander* [1901] AC 297 at 303, HL; *West v Gwynne* [1911] 2 Ch 1 at 15, CA. As to the weighing and balancing of interpretative factors see PARA 1378 post. Where a penal enactment is clearly for the public benefit as being remedial, this may outweigh its penal character: see *R v Vine* (1875) LR 10 QB 195; *Re Pulborough Parish School Board Election, Bourke v Nutt* [1894] 1 QB 725, CA; *Re A Solicitors' Clerk* [1957] 3 All ER 617, [1957] 1 WLR 1219, DC. As to penal enactments see PARA 1240 ante.

5 *R v Griffiths* [1891] 2 QB 145; *Butchers' Hide, Skin and Wool Co Ltd v Seacome* [1913] 2 KB 401. See also *R v Clinton* (1845) 6 LT OS 66 (whether extradition authorised for antecedent offences); *R v O' Connor* [1913] 1 KB 557, CA (meaning of pending proceedings for purposes of enactment providing that Act increasing penalty should not apply to such proceedings). Cf *R v Austin* [1913] 1 KB 55, CCA, where an Act increased a penalty on second conviction of an offence, and a conviction before its commencement was taken into account. See also *R v Reah* [1968] 3 All ER 269, [1968] 1 WLR 1508, CA, where a provision that specified conduct was to be treated as receiving stolen goods was held not to be evidential and therefore not retrospective; *R v Fisher* [1969] 1 All ER 100, [1969] 1 WLR 8, CA, where it was held that, in the absence of contrary intention, an Act abolishing an offence does not render innocent an act which was criminal when the offence was committed; *R v West London Stipendiary Magistrate, ex p Simeon* [1983] 1 AC 234, [1982] 2 All ER 813, HL; and see the Interpretation Act 1978 s 16; para 1309 post; and the cases cited in PARA 1524 post. Cf *R v Clarke* [1982] 3 All ER 232, [1982] 1 WLR 1090, CA (power to suspend sentence in part applied to offence committed before commencement).

6 See eg *Lord Suffield v IRC* [1908] 1 KB 865 at 892, DC; and cf *A-G v Theobald* (1890) 24 QBD 557; *R v Southampton Income Tax Comrs, ex p Singer* [1917] 1 KB 259, CA; *R v Wallington Income Tax General Comrs, ex p Fysh (Inspector of Taxes)* (1962) 40 TC 225, DC, where a provision charging interest on tax lost owing to fraud or neglect was held not to be retrospective; *Wijesureya v Amit* [1966] AC 372, [1965] 3 All ER 701, PC; *Shop and Store Developments v IRC* [1967] 1 AC 472 at 506, [1967] 1 All ER 42 at 55, HL, per Lord Wilberforce; *James v IRC* [1977] 2 All ER 897, [1977] 1 WLR 835 (retrospective surtax (now abolished) upheld).

7 See *Lord Howard de Walden v IRC* [1942] 1 KB 389 at 398, [1942] 1 All ER 287 at 290, CA, per Lord Greene MR, who said of what is now the Income and Corporation Taxes Act 1988 s 739, 'The fact that the section has to some extent a retroactive effect appears to us of no importance when it is realised that the legislation is a move in a long and fiercely contested battle with individuals who well understand the rigour of the contest'. See also *Greenberg v IRC* [1972] AC 109, [1971] 3 All ER 136, HL.

8 See eg *Customs and Excise Comrs v Thorn Electrical Industries Ltd* [1975] 3 All ER 881, [1975] 1 WLR 1661, HL, where the words 'are supplied' in the Finance Act 1972 s 7(8) (repealed) (as originally enacted), were construed as referring to a continuous process so that they covered an agreement for the continuous supply of television sets entered into before the commencement of the Act.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(2) RETROSPECTIVITY/1287. Presumption regarding procedural enactments.

## **1287. Presumption regarding procedural enactments.**

The general presumption against retrospection<sup>1</sup> does not apply to legislation concerned merely with matters of procedure<sup>2</sup>; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament<sup>3</sup>. For this purpose 'procedure' includes matters relating to remedies<sup>4</sup>, defences<sup>5</sup>, penalties<sup>6</sup>, evidence<sup>7</sup> and restrictions on vexatious litigants<sup>8</sup>. Procedural enactments thus affect proceedings pending at their commencement unless the contrary intention appears<sup>9</sup>, whilst the applicability to pending proceedings of a provision altering the structure of appeals may depend on whether it increases or reduces rights of appeal<sup>10</sup>.

1 See PARA 1433 post.

2 For the distinction between substantive and procedural enactments see PARA 1237 ante.

3 This paragraph was cited with approval in *Thompson v Thompson* [1986] Fam 38, [1985] 2 All ER 243, CA. See also *Wright v Hale* (1860) 6 H & N 227 at 230-231; *Gardner v Lucas* (1878) 3 App Cas 582 at 603, HL. For illustrations relating to the Matrimonial Causes Act 1963 (repealed) see *Blyth v Blyth* [1966] AC 643, [1966] 1 All ER 524, HL; *Herridge v Herridge* [1966] 1 All ER 93, [1965] 1 WLR 1506, CA. Cf *Carson v Carson and Stoyek* [1964] 1 All ER 681, [1964] 1 WLR 511. See also *The Ydun* [1899] P 236 at 245-246, CA; *Colonial Sugar Refining Co v Irving* [1905] AC 369 at 372, PC; *R v Chandra Dharma* [1905] 2 KB 335 at 338; *R v Southampton Income Tax Comrs, ex p Singer* [1916] 2 KB 249 at 259; *A-G and Newton Abbott RDC v Dyer* [1947] Ch 67 at 88-89, [1946] 2 All ER 252 at 254; *A-G v Vernazza* [1960] AC 965 at 977, [1960] 3 All ER 97 at 100, HL.

4 As to proceedings subsequently begun see *The Ironsides* (1862) Lush 458. As to pending proceedings see *Re A Debtor, ex p Debtor (No 490 of 1935)* [1936] Ch 237 at 243, CA. See also *Welby v Parker* [1916] 2 Ch 1 at 5, CA (provisions suspending remedies); *Stovin v Fairbrass* (1919) 88 LJ KB 1004, CA; *Landrigan v Simons* [1924] 1 KB 509; *A-G v Vernazza* [1960] AC 965 at 978, [1960] 3 All ER 97 at 100-101, HL; and cf *Burn v Carvalho* (1834) 1 Ad & El 883; *Bank of Athens SA v Royal Exchange Assurance* [1938] 1 KB 771, [1938] 1 All ER 514. See also the following cases about whether a power to order lump sum payments in matrimonial proceedings is procedural: *H v H* [1966] 3 All ER 560; *Williams v Williams* [1971] P 271, [1971] 2 All ER 764; *Powys v Powys* [1971] P 340, [1971] 3 All ER 116; *Jones v Jones* [1971] 3 All ER 1201 at 1203, CA, per Davies LJ. Cf *Cardshops Ltd v John Lewis Properties Ltd* [1983] QB 161, [1982] 3 All ER 746, CA, where it was held that the rules for assessing compensation should be those applying as at the time when the right to compensation arose, which might be after the proceedings leading to the payment of compensation had begun.

5 See *Craxfords (Ramsgate) Ltd v Williams and Steer Manufacturing Co Ltd* [1954] 3 All ER 17, [1954] 1 WLR 1130 (repeal by the Law Reform (Enforcement of Contracts) Act 1954 s 2 (repealed), of the Sale of Goods Act 1893 s 4). Cf *Hurst v Hurst* (1882) 21 ChD 278 at 295, CA.

6 See *DPP v Lamb* [1941] 2 KB 89, [1941] 2 All ER 499; *Buckman v Button* [1943] KB 405, [1943] 2 All ER 82; *R v Oliver* [1944] KB 68, [1943] 2 All ER 800, CCA. But see *R v Deery* [1977] Crim LR 550; *R v Penwith Justices, ex p Hay* (1979) 1 Cr App R (S) 265; *R v Craig* [1982] Crim LR 132 (commentary amended at 191-192).

7 See *Selangor United Rubber Estates Ltd v Cradock (No 2)* [1968] 1 All ER 567n, [1968] 1 WLR 319.

8 See *A-G v Vernazza* [1960] AC 965 at 975, 977, [1960] 3 All ER 97 at 99-100, HL.

9 See eg *Re Lord, Re Special Act of Governor & Co of Copperminers in England* (1854) 1 K & J 90 (power to appoint an umpire in arbitration proceedings); *Singer v Hasson* (1884) 50 LT 326 (power to give leave to disclaim part of an invention in a patent action); *Curtis v Stovin* (1889) 22 QBD 513, CA (power to transfer action to a county court). Cf *Pinhorn v Souster* (1852) 8 Exch 138, where the abolition of special demurrers was held to have been intended to affect future proceedings only. In relation to costs see *Freeman v Moyes* (1834) 1 Ad & El 338 (power to order executors to pay costs of actions brought by them); *Wright v Hale* (1860) 6 H & N 227 (power to deprive successful plaintiff of costs); *Kimbray v Draper* (1868) LR 3 QB 160 (power to require giving of security for costs) (the decisions in *Freeman v Moyes* supra and *Wright v Hale* supra were criticised in *Pinhorn v Souster* (1852) 8 Exch 138 at 143, and *Kimbray v Draper* supra at 162, on the ground that they involved the deprivation of vested rights). In relation to evidence see *Selangor United Rubber Estates Ltd v Cradock (No 2)* [1968] 1 All ER 567n, [1968] 1 WLR 319.

The presumption regarding procedural enactments does not apply if the effect would be to deprive a person of a vested right (eg the right of a plaintiff to continue an action already begun is not affected by a subsequent statute imposing a period of limitation: *Paddon v Bartlett* (1835) 3 Ad & El 884 at 896; *Cornill v Hudson* (1857) 8 E & B 429 at 437). See also *R v Chandra Dharma* [1905] 2 KB 335; *Yew Bon Tew v Kenderaan Bas Mara* [1983] 1 AC 553, [1982] 3 All ER 833, PC.

10 In *Rathbone v Munn* (1868) 18 LT 856 at 857, Blackburn J held that a provision concerning a new right of appeal was of a procedural nature, and that it must therefore be presumed to have been intended to apply to a judgment given after its commencement in proceedings previously instituted. Cf *Hughes v Lumley* (1854) 4 E & B 358; *Vansittart v Taylor* (1855) 4 E & B 910 (cases where, on special grounds, similar provisions were regarded as not so applicable). Such a provision would not, however, be regarded as applicable to judgments already given: see *Anon* (1960) Times, 26 and 29 November at 10 and 3 (operation of the Administration of Justice Act 1960 s 1(1) (now amended by the Criminal Appeal Act 1968 s 54, Sch 7)). On the other hand, in *Colonial Sugar Refining Co v Irving* [1905] AC 369, PC, a provision abolishing an existing right of appeal was held to be inapplicable to pending proceedings on the ground that it was not merely procedural; but see to the contrary *Theo Conway Ltd v Henwood* (1934) 50 TLR 474, CA.

## UPDATE

### 1287 Presumption regarding procedural enactments

NOTE 7--See, however, *Bairstow v Queen's Moat Houses plc* [1998] 1 All ER 343, CA.

NOTE 10--Administration of Justice Act 1960 s 1(1) further amended: Constitutional Reform Act 2005 Sch 9 para 13(2)(a) (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(2) RETROSPECTIVITY/1288. Presumption of minimum degree of retrospection.

### 1288. Presumption of minimum degree of retrospection.

Where an enactment of the kind presumed not to be retrospective is clearly intended to be to some extent retrospective, it is a corollary of the general presumption against retrospectivity<sup>1</sup> that the enactment is to be construed as not having a greater retrospective effect than is necessary to achieve the legislative purpose<sup>2</sup>.

<sup>1</sup> See PARA 1433 post.

<sup>2</sup> *Reid v Reid* (1886) 31 ChD 402 at 408-409, CA; *Re Ashcroft, ex p Todd* (1887) 19 QBD 186 at 195, CA; *Lauri v Renad* [1892] 3 Ch 402 at 421, CA; *Gloucester Union v Woolwich Union* [1917] 2 KB 374 at 378-379; *Gardner & Co v Cone* [1928] Ch 955 at 967. See also *Waugh v Middleton* (1853) 8 Exch 352; *Larpent v Bibby* (1855) 5 HL Cas 481; *Noble v Gadban* (1855) 5 HL Cas 504; *Bath Union Guardians v Berwick-upon-Tweed Guardians* [1892] 1 QB 731; *Lauri v Renad* [1892] 3 Ch 402 at 421, CA; *Eyre v Wynn-Mackenzie* [1896] 1 Ch 135, CA; *Wijesuriya v Amit* [1966] AC 372, [1965] 3 All ER 701, PC; *Skinner v Cooper* [1979] 2 All ER 836, [1979] 1 WLR 666, CA; *Zainal Bin Hashim v Government of Malaysia* [1980] AC 734, [1979] 3 All ER 241, PC; *Hager v Osborne* [1992] Fam 94 at 99, [1992] 2 All ER 494 at 497.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(3) AMENDMENT OF AN ACT OR ENACTMENT/1289. Meaning of 'amendment'.

## (3) AMENDMENT OF AN ACT OR ENACTMENT

### 1289. Meaning of 'amendment'.

To amend an Act or enactment is to alter its legal meaning, whether expressly or by implication<sup>1</sup>. Express amendment may be either textual, where the actual wording is altered, or indirect<sup>2</sup>. Amendment may take the form of, or include, repeal<sup>3</sup>.

Subject to any contrary indication in the amending enactment, an amendment takes effect from the commencement of the enactment making it and not from the commencement of the enactment amended<sup>4</sup>.

An Act may be amended in the same Session of Parliament as that in which it was passed<sup>5</sup>. This rule is most frequently relied on where the enactments relating to a particular subject are to be consolidated and those enactments include enactments which are passing through Parliament at the same time as the consolidation Bill, perhaps to pave the way for consolidation<sup>6</sup>.

1 For the meaning of 'Act' see PARA 1206 ante. For the meaning of an 'enactment', and the passage taken to be indicated by the wording of an amendment thereto, see PARA 1232 ante. As to the identification of the matter affected by an amendment, see also *Piper v Harvey*[1958] 1 QB 439, [1958] 1 All ER 454, CA. As to the legal meaning see PARA 1373 post.

2 As to implied amendment see PARA 1290 post; and as to amendment by subordinate legislation see PARA 1305 post.

3 A substitution is a repeal in so far as it removes words: *Moakes v Blackwell Colliery Co Ltd*[1925] 2 KB 64, CA; *Briggs v Thomas Dryden & Sons*[1925] 2 KB 667, CA. If a provision of an Act is deleted, it can be said that the provision is 'repealed' but that the Act is 'amended'. In so far as an amendment also constitutes a repeal, the rules relating to repeals will apply. As to the nature and attributes of repeal see PARA 1296 post.

4 *L'Office Cherifien des Phosphates v Yamashita-Shinnihon Steamship Co Ltd*[1994] 1 AC 486, [1994] 1 All ER 20, HL. As to commencement see PARA 1279 ante.

5 The rule that a statute may be altered, amended or repealed in the same session of Parliament as that in which it was passed, ie by a statute receiving the royal assent later in that session (*R v Middlesex Justices* (1831) 2 B & Ad 818 at 822, followed, but referred to mistakenly as *Moore v Robinson*, in *British Columbia Electric Rly Co Ltd v Stewart*[1913] AC 816 at 828, PC), was enacted generally in 1850 (ie by 13 & 14 Vict c 21 (Interpretation of Acts) (1850) s 1 (repealed)). The rule is now to be found in the Interpretation Act 1978 s 2, which applies to Acts passed after 1850: s 22(1), Sch 2 para 2. Before that date it was thought that the only statutes which could be so affected were those in which power in that behalf had been expressly reserved (see eg Bac Abr, Statute (D)). Although this view was said to be without authority (*R v Middlesex Justices* supra at 820), the inclusion of express reservations had, in fact, become common form. In the case of statutes passed before 1793, the reservation of such a power did not solve every problem, for it was then the rule (see PARA 1241 ante) that every statute must be treated as having received the royal assent on the first day of the session in which it was enacted, and it followed (see *R v Middlesex Justices* supra at 821) that if any two statutes of the same session were found to conflict, difficulty might arise in deciding which must be taken as representing Parliament's second thoughts on the matter in question. Whether the chapter numbers of the statutes could be relied on for this purpose does not appear to have been decided, but, in any event, chapter numbers could not have answered the question as between statutes falling for the purpose of their numbering into different classes: see PARA 1210 note 2 ante; and as to chapter numbers see PARA 1271 ante.

6 See PARA 1225 ante. For an example of the use of the rule in other circumstances see the Social Security (No 2) Act 1980 (repealed). See also 980 HC Official Report (5th Series), 4 March 1980, oral answers cols 218-219.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(3) AMENDMENT OF AN ACT OR ENACTMENT/1290. Implied amendment.

### **1290. Implied amendment.**

Where a later enactment does not expressly amend (whether textually or indirectly) an earlier enactment, but the provisions of the later enactment are inconsistent with those of the earlier,

the later by implication amends the earlier so far as is necessary to remove the inconsistency between them<sup>1</sup>.

1 As to implied enactments see PARA 1234 ante. If a later Act cannot stand with an earlier, Parliament (though it has not said so) is taken to intend an amendment of the earlier. This is a logical necessity, since two inconsistent texts cannot both be valid. If the entirety of the earlier Act is inconsistent, the effect amounts to an implied repeal of it: see PARA 1299 post. Similarly, a part of the earlier Act may be regarded as impliedly repealed where it cannot stand with the later. Whether statutory exposition (see PARA 1236 ante) is equivalent to implied amendment depends on whether the later enactment indicates an intention to clarify the meaning of the earlier one, thus serving as a declaratory enactment, or merely refers to it.

## UPDATE

### 1290 Implied amendment

NOTE 1--See, however, *Bairstow v Queen's Moat Houses plc* [1998] 1 All ER 343, CA.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(3) AMENDMENT OF AN ACT OR ENACTMENT/1291. The rule in *Attorney General v Lamplough*.

### 1291. The rule in *Attorney General v Lamplough*.

Where an Act is amended (whether by repeal of part of its provisions or otherwise), the question may arise whether the amendment affects the legal meaning of the remainder of the Act<sup>1</sup>. It was laid down in the case of *Attorney General v Lamplough*<sup>2</sup> that, unless the contrary intention appears from the amending Act, the repeal or other amendment of part of an Act does not affect the construction of the remainder. The question, in relation to any amended Act, is whether the amending enactment intended to alter the legal meaning of the remainder of the Act<sup>3</sup>.

1 Eg the Vagrancy Act 1824 s 4 as originally enacted read (in part) 'every person having in his or her custody or possession any picklock, key, crow, jack, bit, or other implement, with intent feloniously to break into any dwelling house, warehouse, coach house, stable or outbuilding or being armed...'. The words between 'every person' and 'being armed' were repealed by the Theft Act 1968 s 33(3), Sch 3 Pt I. In *Wood v Comr of Police of the Metropolis* [1986] 2 All ER 570 at 574, [1986] 1 WLR 796 at 802, DC, Nolan J said that originally the repealed words might have been taken to indicate that 'person' was to be construed narrowly as referring only to an itinerant but what was left, reading 'every person being armed', must be taken as general in its reference. This overlooks the rule in *A-G v Lamplough* (1878) 3 Ex D 214 at 223 (upheld on appeal 3 Ex D 224 at 231, CA: see the text and notes 2-3 infra) and is therefore incorrect.

2 Ie *A-G v Lamplough* (1878) 3 Ex D 214 at 223 per Kelly CB (dissenting); upheld on appeal 3 Ex D 224 at 231, CA. The rule seems to be little known, though courts often arrive at the result indicated by it anyway. See eg *Suffolk County Council v Mason* [1979] AC 705 at 714, [1979] 2 All ER 369 at 374-375, HL; *R v Greater Manchester North District Coroner, ex p Worth* [1988] QB 513 at 528, [1987] 3 All ER 661 at 668, CA. Cf *Ford v Falcone* [1971] 2 All ER 1138, [1971] 1 WLR 809, DC.

3 For a case where the amending enactment clearly did so intend see *Chapman v Kirke* [1948] 2 KB 450, [1948] 2 All ER 556, DC, where an offence under a section of an Act which related to the negligent driving of 'stage carriages' was held capable of commission in respect of an electric tramcar since a definition section by which 'stage carriage' was restricted to vehicles drawn by animal power had been repealed. See further PARA 1311 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(3) AMENDMENT OF AN ACT OR ENACTMENT/1292. Consequential amendments.

### **1292. Consequential amendments.**

An enactment may require amendment in consequence of substantive provisions contained in a later Act or instrument<sup>1</sup>. It may be debatable whether or not a consequential amendment ought to have been effected by specific amendment but was not in a particular case<sup>2</sup>.

It is presumed that Parliament, in making amendments to an Act dealing with one subject matter which are purely consequential on the passing of an Act dealing with a quite different subject matter, did not intend to make any fundamental change in the former Act<sup>3</sup>.

1 The main provisions of a new Act usually require the making of consequential minor changes to existing Acts, known as consequential amendments (or 'consequentials'). Often these changes are widespread and numerous. There are three ways of effecting them:

- (1) no express consequential amendments are included in the new Act; under the doctrine of implied repeal (see PARA 1299 post), the inconsistent provisions in the new Act simply override earlier law and the consequential amendments are thus effected purely by implication;
- (2) general consequential amendments are included in the new Act; these do not textually amend the inconsistent provisions of the existing law, but merely apply a general formula to them;
- (3) specific consequential amendments are included in the new Act; these textually amend the affected provisions, which can thereafter be reprinted in their amended form.

The third of these methods is the most efficient for the statute user, who then has the amended provision as a single text and does not need to conjecture if and how the new Act has indirectly altered the law. Modern practice is to use the third method for the more obvious consequential amendments and the second method for the rest.

2 An amendment which ought to have been effected by specific amendment but has not been is known as a 'missed consequential'. Eg the Firearms Act 1937 s 22 (repealed) made it an offence for a person to have in his possession any firearm 'with intent by means thereof to endanger life'. When enacted, this covered a person who had possession of a firearm with intent to kill himself, suicide being an offence. On the passing of the Suicide Act 1961 suicide ceased to be an offence; since there was thereafter no criminality in taking one's own life, there could arguably be no criminality in endangering one's own life. Although the Suicide Act 1961 did not say so, it was treated as effecting a consequential amendment to this effect in the Firearms Act 1937 s 22 (*R v Rex Norton* [1977] Crim LR 478; cf *Bryan v Mott* (1975) 62 Cr App Rep 71, DC; [1976] Crim LR 64, DC). For another example see *Cheeseman v DPP* [1992] QB 83, [1991] 3 All ER 54, DC (any place of public resort under the control of a local authority to be deemed to be a 'street' for the purposes of the Town Police Clauses Act 1847 s 28 (as amended), but no consequential amendment of the term 'passenger'). For missed consequential amendments in the Housing Acts see the *Report on the Consolidation of the Housing Acts* (Law Com no 144 (Cmnd 9515)) Recommendations 1, 6, 33; and in the Rating (Disabled Persons) Act 1978 (repealed), rectified by the Drainage Rates (Disabled Persons) Act 1986 (repealed) see (1986) 130 Sol Jo 638.

3 See eg *Ye Olde Cheshire Cheese Ltd v Daily Telegraph plc* [1988] 3 All ER 217, [1988] 1 WLR 1173.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(3) AMENDMENT OF AN ACT OR ENACTMENT/1293. Extra-statutory concessions.

### **1293. Extra-statutory concessions.**



Where the legal meaning of an enactment imposing taxes or similar burdens produces a charge which the responsible authority considers should not be imposed, or should be imposed in a less onerous way, the authority may grant an extra-statutory concession by which the burden is relieved. This has the de facto (though not de jure) effect of an amendment to, or suspension of, the enactment<sup>1</sup>.

1 A frequent example occurs where the legal meaning of a taxing enactment produces a charge which the tax authority considers should not be imposed, or should be imposed in a way less onerous to the taxpayer. See eg *Wicks v Firth (Inspector of Taxes)* [1983] 2 AC 214 at 230, [1983] 1 All ER 151 at 154, HL. See also *R v Comrs of Customs and Excise, ex p Cook* [1970] 1 All ER 1068 at 1071-1072, [1970] 1 WLR 450 at 454-455, DC; *Customs and Excise Comrs v Mechanical Services (Trailer Engineers) Ltd* [1979] 1 All ER 501, [1979] 1 WLR 305, CA; *R v IRC, ex p MFK Underwriting Agents Ltd* [sic] [1990] 1 WLR 1545 at 1574, 62 TC 607 at 648, DC. For other forms of extra-statutory arrangements see eg *Woolwich Equitable Building Society v IRC* [1991] 4 All ER 92, [1990] 1 WLR 1400, HL (payment of lump sum in lieu of deducting income tax at source from interest paid to depositors). As to the suspension of an Act see PARA 1315 post. For extra-statutory concessions relating to stamp duty see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARAS 1089, 1093, 1109 ante. As to the application of extra-statutory concessions see further INCOME TAXATION vol 23(1) (Reissue) PARA 28.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(3) AMENDMENT OF AN ACT OR ENACTMENT/1294. Transitional provisions.

## **1294. Transitional provisions.**

Where an Act contains an amending enactment, it commonly also includes a transitional provision which regulates the coming into operation of the enactment and (where necessary) modifies its effect during the period of transition<sup>1</sup>. Where the Act fails to include such a provision expressly, or (as frequently happens) includes an inadequate transitional provision, the court is required to draw such inferences as to the intended transitional arrangements as, in the light of the interpretative criteria, it considers Parliament to have intended<sup>2</sup>.

It is important for the interpreter to realise that what appears to be the plain meaning of a substantive enactment is often modified by transitional provisions located elsewhere in the Act, or by transitional provisions which fall to be treated as implied<sup>3</sup>. The consequences of overlooking this can be serious<sup>4</sup>.

One feature of a transitional provision is that its operation is expected to be temporary, in that it becomes spent when all the past circumstances with which it is designed to deal have been dealt with<sup>5</sup>.

1 As to the commencement of an enactment see PARA 1279 ante. The purpose of a transitional provision is to facilitate the change from one statutory régime to another, making special provision for the application of legislation to the circumstances which exist at the time when it comes into force: *Britnell v Secretary of State for Social Security* [1991] 2 All ER 726 at 729-730; sub nom *R v Secretary of State for Social Security, ex p Britnell* [1991] 1 WLR 198 at 202, HL, per Lord Keith.

2 See eg *Lower v Sorrell* [1963] 1 QB 959, [1962] 3 All ER 1074, CA; *Thomson Yellow Pages Ltd v Pugh* [1975] Crim LR 118; *Frobisher (Second Investments) Ltd v Kiloran Trust Co Ltd* [1980] 1 All ER 488, [1980] 1 WLR 425; *Cardshops Ltd v John Lewis Properties Ltd* [1983] QB 161, [1982] 3 All ER 746, CA.

3 As to implied enactments see PARA 1234 ante.

4 The transitional provisions in the Magistrates' Courts Act 1980 (a consolidation Act) were overlooked by numerous prosecutors and others concerned with the working of magistrates' courts. In several cases this required the discharging of juries and the obtaining of bills of indictment in the High Court. The Act came into force on 6 July 1981 by virtue of the Magistrates' Courts Act 1980 (Commencement) Order 1981, SI 1981/457,

and many magistrates' courts then began committing all current cases for trial under its provisions. They failed to notice that in the Magistrates' Courts Act 1980 s 154(2), Sch 8 para 2(1) there was a transitional provision to the effect that where proceedings had begun before 6 July, committals should be made under the enactments consolidated and not under the new Act: see Terence Shaw (Legal Correspondent), *The Daily Telegraph* (1981), 30 September. For another misunderstanding over the transitional provisions of this Act see *R v Folkestone and Hythe Juvenile Court, ex p R (a juvenile)* [1981] 3 All ER 840, [1981] 1 WLR 1501, DC.

5 *Britnell v Secretary of State for Social Security* [1991] 2 All ER 726 at 729-730; sub nom *R v Secretary of State for Social Security, ex p Britnell* [1991] 1 WLR 198 at 202, HL, per Lord Keith. Nourse J said in relation to the Development Land Tax Act 1976 s 45(4), (8) (repealed): 'One thing which is clear about [s 45](4) and (8) is that the former is a permanent provision and the latter is a transitional one ... it would be very dangerous, in trying to get to the effect of the permanent provision, to attach too much weight to the particular wording of the transitional one (*IRC v Metrolands (Property Finance) Ltd* [1981] 2 All ER 166 at 183, [1981] 1 WLR 637 at 649; on appeal [1982] 2 All ER 557, [1982] 1 WLR 341, HL).

## UPDATE

### 1294 Transitional provisions

NOTE 1--See *Vela Fishing Ltd v IRC* [2003] UKPC 32, [2003] STC 732 (term 'corresponding provision' extended scope of current legislation to repealed legislation of similar nature dealing with same subject matter). A power in an Act to provide for transitory, transitional or saving purposes in connection with the coming into force of any provision of the Act does not include a power to amend: *R (on the application of Haw) v Secretary of State for the Home Department* [2005] EWHC 2061 (Admin), [2006] QB 35, DC.

NOTE 2--See also *R v A (Appeal under s 58 of the Criminal Justice Act 2003)* [2005] All ER (D) 242 (Dec), CA.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(3) AMENDMENT OF AN ACT OR ENACTMENT/1295. References to an amended enactment.

### 1295. References to an amended enactment.

Unless the contrary intention appears, a reference in an Act passed after 1978 to an enactment is to be construed as a reference to that enactment as amended, and as including a reference to it as extended or applied, by or under any other enactment, including any other provision of the Act<sup>1</sup>.

1 Interpretation Act 1978 ss 20(2), 22(1). This provision was designed to obviate the need for ad hoc provisions on the lines of those which, by 1978, were appearing in approximately two out of every three Acts: see PARA 8 of the recommendations annexed to the *Report on the Interpretation Act 1889 etc* (Law Com no 90). The Interpretation Act 1978 s 20(2) adopts the widest of the formulas then in common use. See also *Willows v Lewis (Inspector of Taxes)* (1981) 125 Sol Jo 792, where it was held that such a formula did not apply to amendments, extensions or applications made to the enactment referred to after the passing of the Act in which the reference was contained. However a ruling to the contrary would have involved a charge to tax, and such a ruling may not be applicable in other cases. Normally where another Act is referred to, the reference is to the Act as it subsists for the time being (ie at the time when the reference falls to be applied) even if that is after the date of amendments made since the referring Act was passed. This is because usually an Act can be applied only in the state it is in at the time; it has no existence in any other state. See further PARAS 1312-1313 post. For the meaning of 'Act' see PARA 1232 note 2 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(i) Nature and Types of Repeal/1296. Meaning of 'repeal'.

## **(4) REPEAL OF AN ACT OR ENACTMENT**

### **(i) Nature and Types of Repeal**

#### **1296. Meaning of 'repeal'.**

To repeal an Act is to cause it to cease to be a part of the corpus juris or body of law<sup>1</sup>. To repeal an enactment contained in an Act is to cause it to cease to be in law a part of the Act containing it<sup>2</sup>. The general principle is that, except as to transactions past and closed, an Act or enactment which is repealed is to be treated thereafter as if it had never existed<sup>3</sup>. However, the operation of the principle is subject to any savings made, expressly or by implication, by the repealing enactment<sup>4</sup>, and in most cases it is subject also to the general statutory provisions as to the effects of repeal<sup>5</sup>.

Apart from such exceptions, the effect would be:

- (1) that proceedings pending under an enactment at the time of its repeal could not be continued after that time<sup>6</sup>; and, a fortiori,
- (2) that after its repeal proceedings under an enactment could not be initiated in respect of matters arising before that time<sup>7</sup>; and
- (3) that a contract or document invalidated by an enactment might become operative again when the enactment was repealed<sup>8</sup>; and
- (4) that the repeal of a repealing enactment brought about the revival of the enactments which it had itself repealed<sup>9</sup>.

Repeal is to be distinguished from inconsistency within an Act<sup>10</sup>.

1 The Act is thereby treated as revoked or abrogated, and removed from what is popularly known as the 'statute book' (see PARA 1205 ante). As to the nature of an Act see PARA 1206 ante; as to the principle that an Act cannot be rendered incapable of repeal see PARA 1201 ante; and as to repeal by subordinate legislation see PARA 1305 post.

2 Such an enactment is treated pro tanto in the same way as a repealed Act. As to the nature of an enactment see PARA 1232 ante. The repeal of such an enactment constitutes the amendment of the Act containing it, so the rules applicable to amendments (see PARAS 1289-1295 ante) also apply.

3 *Surtees v Ellison* (1829) 9 B & C 750 at 752, cited with approval in *Re Mexican and South American Co, Grisewood and Smith's Case, De Pass's Case* (1859) 4 De G & J 544 at 557, and in *Butcher v Henderson* (1868) LR 3 QB 335 at 338. See also *Kay v Goodwin* (1830) 6 Bing 576 at 582 (cited in *Lemm v Mitchell* [1912] AC 400 at 406, PC); *Boddington v Wisson* [1951] 1 KB 606 at 610-611, [1951] 1 All ER 166 at 168, CA; *Eton College v Minister of Agriculture, Fisheries and Food* [1964] Ch 274, [1962] 3 All ER 290.

4 See eg *Wigram v Fryer* (1887) 36 ChD 87 at 99.

5 See the Interpretation Act 1978 ss 15-17, 19(2); and PARA 1306 et seq post. For further exceptions to the general principle see also PARAS 1300-1305 post.

6 *Miller's Case* (1764) 1 Wm Bl 451; *R v Mawgan Inhabitants* (1838) 8 Ad & El 496; *R v Denton Inhabitants* (1852) 18 QB 761; but cf *Selangor United Rubber Estates Ltd v Cradock (a bankrupt) (No 4)* [1969] 3 All ER 965 at 977, [1969] 1 WLR 1773 at 1783 per Ungood-Thomas J. Similarly a court could not make any special order as to costs which was authorised by an enactment repealed after trial but before an order had

been made: *Charrington v Meatheringham* (1837) 2 M & W 228; *Morgan v Thorne* (1841) 7 M & W 400; *Butcher v Henderson* (1868) LR 3 QB 335.

7 *R v M'Kenzie* (1820) Russ & Ry 429; *R v Swan* (1849) 4 Cox CC 108; *Dean v Mellard* (1863) 15 CBNS 19.

8 See *Re Mexican and South American Co, Grisewood and Smith's Case, De Pass's Case* (1859) 4 De G & J 544 at 557 per Turner LJ; and the authorities cited in PARA 1306 note 4 post. Cf *Jaques v Withy and Reid* (1788) 1 Hy Bl 65, where the contract under consideration would appear to have become spent before the repeal of the invalidating enactment.

9 See *Tattle v Grimwood* (1826) 3 Bing 493 per Best CJ, citing the resolutions of the judges in the *Case at a Committee concerning Bishops* (1606) 12 Co Rep 7; *Phillips v Hopwood* (1829) 10 B & C 39. See also eg *Mount v Taylor* (1868) LR 3 CP 645; *Eton College v Minister of Agriculture, Fisheries and Food* [1964] Ch 274, [1962] 3 All ER 290. It is no answer that the repealed enactment has been re-enacted: see *Stowers v Darnell* [1973] Crim LR 528. As to revival generally see PARA 1316 post.

10 As to inconsistency within an Act see *Castrique v Page* (1853) 13 CB 458 at 461, 464; and PARA 1484 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(i) Nature and Types of Repeal/1297. Modes of repeal.

### 1297. Modes of repeal.

No special wording is required to effect a repeal<sup>1</sup>; the question is simply one of the intention of the legislator<sup>2</sup>, but it is usual to distinguish between express and implied repeal<sup>3</sup> though there is no difference in their effect<sup>4</sup>.

Where an Act contains a repealing enactment, it commonly also includes a transitional provision which regulates the coming into operation of the enactment and (where necessary) modifies its effect during the period of transition<sup>5</sup>.

1 *R v Longmead* (1795) 2 Leach 694 at 696.

2 As to the rule that an Act may be repealed in the same session of Parliament as that in which it was passed see PARA 1289 ante.

3 As to express repeal see PARA 1298 post; and as to implied repeal see PARA 1299 post.

4 The practice, favoured in the past, of repealing expressly, but without particularising them, 'all provisions inconsistent with this Act' was valueless, serving merely to substitute for the uncertainty of the general law an express provision of equal uncertainty: *Garnett v Bradley* (1878) 3 App Cas 944 at 965, HL. For a modern example see the Water Act 1981 s 4(4) (repealed). As to the authorising of repeal by subordinate legislation see PARA 1305 post.

5 In such a case the same rules apply as in the case of transitional provisions relating to amending enactments: see PARA 1294 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(i) Nature and Types of Repeal/1298. Express repeal.

### 1298. Express repeal.

Although no special wording is needed to effect a repeal, certain formulas are in common use<sup>1</sup>. Where a portion of an enactment which is to be repealed is cited by reference to the words, section numbers etc with which it begins and ends, this reference is prima facie inclusive<sup>2</sup>. In modern Acts it is usual, where the number of repeals is considerable, to set them out in a columnar repeal Schedule<sup>3</sup>.

The practice known as double repeal is common. Here it is stated in the body of the Act that the enactment in question shall 'cease to have effect' and the enactment is also included in the repeal Schedule<sup>4</sup>.

1 The formula may be 'is hereby repealed' or 'shall cease to have effect' or, if the enactment is not yet in operation, 'shall not have effect', or that a particular passage 'shall be omitted'. As to the so-called double repeal see the text and note 4 infra.

2 See PARA 1232 text and note 8 ante.

3 As to the Schedule to an Act see PARA 1260 ante. For a detailed examination of the function of a particular repeal Schedule see *Hough v Windus* (1884) 12 QBD 224 at 236, CA.

4 The object of double repeal is simply to draw the repeal to the attention of those considering the Bill for the Act (by including it in the body of the Bill) while at the same time enabling the columnar repeal Schedule to be comprehensive. It has no other purpose: *Lewis v Hughes* [1916] 1 KB 831, CA; *Henshall v Porter* [1923] 2 KB 193; *Coates v Diment* [1951] 1 All ER 890; *R v West London Stipendiary Magistrate, ex p Simeon* [1983] 1 AC 234, [1982] 2 All ER 813, HL. So that Members of Parliament debating a Bill do not need to scrutinise the repeal Schedule, the practice is not to include in a repeal Schedule any enactment not also repealed in the body of the Bill unless it must necessarily cease to have effect in consequence of the new provisions, or is spent or obsolete. However, the repeal Schedule may be used to define precisely the extent of a repeal effected earlier in the Bill in general terms (see eg the Criminal Law Act 1977 s 18(1), repealed and re-enacted in the Magistrates' Courts Act 1980 s 127(2)).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(i) Nature and Types of Repeal/1299. Implied repeal; in general.

### **1299. Implied repeal; in general.**

An intention to repeal an Act or enactment may be inferred from the nature of the provision made by the later enactment<sup>1</sup>. Repeal by implication cannot be prohibited<sup>2</sup>, but such an implication is found by the courts with reluctance because the precision of modern drafting means that necessary repeals are usually effected expressly<sup>3</sup>.

The rule is, therefore, that one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to that other that the two are incapable of standing together<sup>4</sup>. The courts are particularly reluctant to hold that constitutional enactments have been impliedly repealed<sup>5</sup>.

The principles relating to implied repeal of an enactment apply equally to the abrogation by statute of a rule of common law<sup>6</sup>.

1 *Dore v Gray* (1788) 2 Term Rep 358 at 365; *Re Williams, Jones v Williams* (1887) 36 ChD 573 at 578; *Ellen Street Estates Ltd v Minister of Health* [1934] 1 KB 590 at 595-596, CA. The inference is based on the principle expressed in the maxim *leges posteriores priores contrarias abrogant* (later laws abrogate prior contrary laws): see 2 Co Inst 685. As to the special considerations which apply where the later provision is a re-enactment of one first enacted before the provision alleged to be impliedly repealed see PARA 1303 post.

2 *Ellen Street Estates Ltd v Minister of Health* [1934] 1 KB 590 at 595-596, CA.

3 *United States of America Government v Jennings* [1983] 1 AC 624 at 643-644; sub nom *Jennings v United States Government* [1982] 3 All ER 104 at 116, HL. Earlier it was said that it is to be presumed that Parliament would not intend to effect so important a matter as the repeal of a law without expressing its intention to do so: *R v Halliday* [1917] AC 260 at 305, HL. See also *The India* (1864) Brown & Lush 221 at 224; *Great Western Rly Co v Swindon and Cheltenham Extension Rly Co* (1884) 9 App Cas 787 at 809, HL.

4 *West Ham Churchwardens and Overseers v Fourth City Mutual Building Society* [1892] 1 QB 654 at 658, DC; *Kutner v Phillips* [1891] 2 QB 267 at 271-272 (approved in *Flannagan v Shaw* [1920] 3 KB 96 at 105, CA; *Wallwork v Fielding* [1922] 2 KB 66 at 74, CA; *R v National Arbitration Tribunal, ex p Bolton Corp* [1941] 2 KB 405 at 415, CA); *Re Berrey, Lewis v Berrey* [1936] Ch 274 at 279; *Pattinson v Fittingley Internal Drainage Board* [1970] 2 QB 33, [1970] 1 All ER 790. It is possible for two enactments, covering much the same ground, to exist together without the later repealing the earlier: see eg the Interpretation Act 1978 s 18; and *Rippingale Farms Ltd v Black Sluice Internal Drainage Board* [1963] 3 All ER 726, [1963] 1 WLR 1347, CA. For an early example see *R v Davis* (1783) 1 Leach 271 (statute creating capital offence held impliedly repealed by later Act imposing penalty of only £20).

5 See *Petition of The Earl of Antrim and Eleven Other Irish Peers* [1967] 1 AC 691 at 724, HL, per Lord Wilberforce ('I confess to some reluctance to holding that an Act of such constitutional significance as the Union with Ireland Act is subject to the doctrine of implied repeal'). See also *Re Parliamentary Privilege Act 1770* [1958] AC 331 at 350, [1958] 2 All ER 329 at 332, PC; *Kariapper v Wijesinha* [1968] AC 717, [1967] 3 All ER 485, PC.

6 See *United States of America Government v Jennings* [1983] 1 AC 624; sub nom *Jennings v United States Government* [1982] 3 All ER 104, HL.

## UPDATE

### 1299 Implied repeal; in general

NOTE 5--See also *Thoburn v Sunderland CC*; *Hunt v Hackney LBC*; *Harman v Cornwall CC*; *Collins v Sutton LBC* [2002] EWHC 195 (Admin ), [2003] QB 151, [2002] 4 All ER 156, DC (in relation to the European Communities Act 1972 s 2(2)).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(i) Nature and Types of Repeal/1300. Implied repeal of particular enactment by general enactment.

### 1300. Implied repeal of particular enactment by general enactment.

It is difficult to imply a repeal where the earlier enactment is particular, and the later general<sup>1</sup>. In such a case the maxim *generalia specialibus non derogant* (general things do not derogate from special things)<sup>2</sup> applies. If Parliament has considered all the circumstances of, and made special provision for, a particular case, the presumption is that a subsequent enactment of a purely general character would not have been intended to interfere with that provision<sup>3</sup>; and therefore, if such an enactment, although inconsistent in substance, is capable of reasonable and sensible application without extending to the case in question, it is prima facie to be construed as not so extending<sup>4</sup>. The special provision stands as an exceptional proviso upon the general<sup>5</sup>. If, however, it appears from a consideration of the general enactment in the light of admissible circumstances that Parliament's true intention was to establish thereby a rule of universal application, then the special provision must give way to the general<sup>6</sup>.

1 *Gregory's Case* (1596) 6 Co Rep 19b, cited in *Kutner v Phillips* [1891] 2 QB 267 at 272. See also eg *Blake (Valuation Officer) v Hendon Corp* [1962] 1 QB 283, [1961] 3 All ER 601, CA. For the distinction between general and particular enactments see PARA 1235 ante.

2 As to the application of this maxim in the construction of different provisions of the same Act see PARA 1486 post.

3 *London and Blackwall Rly Co v Limehouse District Board of Works* (1856) 3 K & J 123 at 128; *Fitzgerald v Champneys* (1861) 2 John & H 31 at 54-55; *Barker v Edger* [1898] AC 748 at 754, PC. The presumption is that language which is in its character only general refers to a subject matter appropriate to class as distinguished from individual treatment: *Blackpool Corp v Starr Estate Co Ltd* [1922] 1 AC 27 at 34, HL.

4 *Garnett v Bradley* (1878) 3 App Cas 944 at 952-953, 967-969, HL; *Seward v Vera Cruz, The Vera Cruz* (1884) 10 App Cas 59 at 68, HL, per Lord Selborne LC, a judgment said in *Whitechapel Board of Works v Crow* (1901) 84 LT 595 at 598, DC, to have been always accepted as the ruling authority on the question. See also *Lyn v Wyn* (1662) O Bridg 122 at 127 (cited in *Thames Conservators v Hall* (1868) LR 3 CP 415 at 421; *Dodds v Shepherd* (1876) 1 Ex D 75 at 78); *Esquimalt Waterworks Co v City of Victoria Corp* [1907] AC 499 at 509, PC; *The Countess* [1922] P 41 at 57, CA; *Nicolle v Nicolle* [1922] 1 AC 284 at 290, PC.

5 *Taylor v Oldham Corp* (1876) 4 ChD 395 at 410; *Garnett v Bradley* (1878) 3 App Cas 944 at 967, HL. The principle is well illustrated by a number of decisions relating to the effect on provisions exempting particular persons from present and future taxes etc of provisions imposing new levies on persons generally: see eg *Williams v Pritchard* (1790) 4 Term Rep 2; *London Corp v Netherlands Steamboat Co* [1906] AC 263, HL; *Associated Newspapers Ltd v London Corp* [1916] 2 AC 429, HL; *Pole-Carew v Craddock* [1920] 3 KB 109, CA; *Wiltshire County Valuation Committee v Boyce* [1948] 2 KB 125, [1948] 1 All ER 694, CA; and cf *Duncan v Scottish North-Eastern Rly Co* (1870) LR 2 Sc & Div 20. For further illustrations see *Trudgin's Case* (1578) as discussed in *Foster's Case* (1614) 11 Co Rep 56b at 63b; *Hawkins v Gathercole* (1855) 6 De GM & G 1; *Thorpe v Adams* (1871) LR 6 CP 125; *R v Champneys* (1871) LR 6 CP 384; *Re Turner, ex p Attwater* (1876) 5 ChD 27, DC; *Paine v Slater* (1883) 11 QBD 120, CA; *Re Smith's Estate, Clements v Ward* (1887) 35 ChD 589 (cf *Re Douglas, Douglas v Simpson* [1905] 1 Ch 279); *Re Standard Manufacturing Co* [1891] 1 Ch 627, CA; *Hornsey District Council v Smith* [1897] 1 Ch 843, CA; *The Theodora* [1897] P 279, DC; *Ashton-under-Lyne Corp v Pugh* [1898] 1 QB 45, CA; *Lancashire Asylums Board v Manchester Corp* [1900] 1 QB 458, CA; *Headland v Coster* [1905] 1 KB 219, CA (affd sub nom *Coster v Headland* [1906] AC 286, HL); *Bristol Corp v Canning* (1906) 95 LT 183; *White and Hales v Islington Corp* [1909] 1 KB 133, CA; *Fox v Pett* [1918] 2 KB 196; *Flannagan v Shaw* [1920] 3 KB 96, CA; *The Danube II* [1921] P 183, CA; *R v Minister of Health, ex p Villiers* [1936] 2 KB 29, [1936] 1 All ER 817, DC; *North Level Comrs v River Welland Catchment Board* [1938] Ch 379, [1937] 4 All ER 684; *Bishop of Gloucester v Cunnington* [1943] KB 101, [1943] 1 All ER 61, CA.

6 See eg *Bramston v Colchester Corp* (1856) 6 E & B 246; *Daw v Metropolitan Board of Works* (1862) 12 CBNS 161; *Great Central Gas Consumers Co v Clarke* (1862) 13 CBNS 838; *Pellas v Neptune Marine Insurance Co* (1879) 5 CPD 34, CA; *R v Glamorganshire Justices* (1889) 22 QBD 628, DC; *R v Bridge* (1890) 24 QBD 609; *Whitechapel Board of Works v Crow* (1901) 84 LT 595, DC; *Charing Cross and Strand Electricity Supply Corp v Woodthorpe* (1903) 88 LT 772, DC; *Re Douglas, Douglas v Simpson* [1905] 1 Ch 279 (cf *Re Smith's Estate, Clements v Ward* (1887) 35 ChD 589). See also *Harlow v Minister of Transport and Rugby Portland Cement Co Ltd* [1951] 2 KB 98, [1950] 2 All ER 1005, CA. This paragraph was cited with approval in *Pattinson v Finningley Internal Drainage Board* [1970] 2 QB 33 at 38-39, [1970] 1 All ER 790 at 793 per Bean J.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(i) Nature and Types of Repeal/1301. Implied repeal of general enactment by particular enactment.

### **1301. Implied repeal of general enactment by particular enactment.**

To the extent that the continued application of a general enactment to a particular case is inconsistent with special provision subsequently made as respects that case, the general enactment is overridden by the particular, the effect of the special provision being to exempt the case in question from the operation of the general enactment or, in other words, impliedly to repeal the general enactment in relation to that case<sup>1</sup>.

The question whether a general enactment has been repealed in part by a subsequent particular enactment arises most frequently as between a provision in a public general Act<sup>2</sup> and one dealing with the same subject matter in a local Act<sup>3</sup> or a personal Act<sup>4</sup>.

The courts will be slow to find that a public Act was intended to be affected by a local or personal Act<sup>5</sup>, and will in any event hold its operation to have been excluded to the least possible extent<sup>6</sup>. In so far, however, as effect cannot be given to both at the same time, the later Act must prevail<sup>7</sup>.

1 See *Heston and Isleworth UDC v Grout* [1897] 2 Ch 306 at 313, CA, where Lindley LJ set at rest doubts expressed by North J at first instance (at 309-310; see also *Re Williams, Jones v Williams* (1887) 36 ChD 573 at 576 et seq per North J) whether the partial abrogation of an enactment in this manner amounts technically to a repeal. If, on the other hand, the particular enactment merely modifies the general in its application to the particular case, or makes its continued application to that case dependent on the fulfilment of conditions, no repeal is involved. For the distinction between general and particular enactments see PARA 1234 ante. See further PARA 1306 notes 1-2 post.

2 As to public general Acts see PARA 1210 ante.

3 As to local Acts see PARA 1213 ante.

4 As to personal Acts see PARA 1214 ante. The question may, of course, arise as between two public Acts: see eg *Luby v Warwickshire Miners' Assocn* [1912] 2 Ch 371, where Acts regulating the affairs of trade unions were held to have exempted them by implication from the operation of earlier Acts relating to unlawful combinations. See also *Boden v Smith* (1849) 18 LJCP 121; *The Dart* [1893] P 33, CA.

5 *Perring v Traill* (1874) LR 18 Eq 88 at 91; *Wallasey United Tramways and Omnibus Co v Wallasey UDC* (1900) 17 TLR 152, HL. For examples of refusal so to find see *Tyne Improvement Comrs v Chirton Overseers* (1859) 1 E & E 516; *Mersey Docks and Harbour Board v Cameron, Jones v Mersey Docks and Harbour Board* (1865) 11 HL Cas 443; *Hill v Hall* (1876) 1 Ex D 411; *Brighton Corp v Brighton Guardians* (1880) 5 CPD 368; *Mersey Docks and Harbour Board v Lucas* (1883) 8 App Cas 891, HL; *Uckfield RDC v Crowborough District Water Co* [1899] 2 QB 664, DC.

6 *Re Verrall, National Trust for Places of Historic Interest or Natural Beauty v A-G* [1916] 1 Ch 100 at 108.

7 See eg *Perring v Traill* (1874) LR 18 Eq 88; *City and South London Rly Co v LCC* [1891] 2 QB 513, CA; *LCC v London School Board* [1892] 2 QB 606, DC; *Surrey Commercial Dock Co v Bermondsey Corp* [1904] 1 KB 474, DC; *Duke of Argyll v IRC* (1913) 109 LT 893; *Re Verrall, National Trust for Places of Historic Interest or Natural Beauty v A-G* [1916] 1 Ch 100.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(i) Nature and Types of Repeal/1302. Implied repeal of one private Act by another.

### 1302. Implied repeal of one private Act by another.

From the nature of private Bill legislation, a court is unlikely to find by implication that Parliament intended by one private Act to repeal the whole or part of another private Act, and there have been suggestions that it cannot be done<sup>1</sup>. There would appear to be little authority directly to the contrary of the latter proposition<sup>2</sup>. However, the proposition seems indefensible in principle<sup>3</sup>, and it may be doubted whether the authorities on which it rests are such as to ensure its acceptance today<sup>4</sup>.

1 See *Sion College v London Corp* [1900] 2 QB 581 at 586-587; on appeal [1901] 1 KB 617, CA. At first instance it was held that one private Act had repealed another by implication. On appeal, the court declined to express an opinion on the point, and decided the appeal on a point of construction which was overruled in *Associated Newspapers v London Corp* [1916] 2 AC 429, HL. See also *Birkenhead Docks Trustees v Laird and*



*Birkenhead Dock Co* (1853) as reported in 23 LJ Ch 457 at 458-459; *Purnell v Wolverhampton New Waterworks Co* (1861) 10 CBNS 576 at 587 per Erle CJ, and at 591 per Byles J. In *Purnell v Wolverhampton New Waterworks Co* supra Erle CJ, however, detracted from the force of his remarks by adding, at 588, 'There certainly is no express repeal; and I am unable to see any intention to repeal'. As to private Acts see PARAS 1211-1212 ante.

2 See *Pollock v Lands Improvement Co* (1888) 37 ChD 661 at 666, where Chitty J was clearly of opinion that there could be an implied repeal in such a case; and *East London Rly Co v River Thames Conservators* (1904) as reported in 68 JP 302 at 306.

3 Cf *Ellen Street Estates Ltd v Minister of Health* [1934] 1 KB 590 at 595, CA, per Scrutton LJ, who referred to the constitutional position that every Act is liable to be repealed either expressly or by implication, and held ineffective an express provision seeking to render an Act incapable of implied repeal. See also PARA 1201 ante.

4 The proposition is questioned in Craies, *Statute Law* (7th Edn, 1971) 586.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(i) Nature and Types of Repeal/1303. Repeal and re-enactment.

### **1303. Repeal and re-enactment.**

Where an Act<sup>1</sup> passed after 1850 repeals a previous enactment and substitutes provisions for the enactment repealed, the repealed enactment remains in force until the substituted provisions come into force<sup>2</sup>.

Where any Act passed after 1889 repeals and re-enacts, with or without modification, a previous enactment, then, unless the contrary intention appears, any reference in any other enactment to the enactment so repealed must be construed as a reference to the provision re-enacted<sup>3</sup>. In repeals after 1978 the rule applies to references in subordinate legislation, in deeds and in other instruments and documents<sup>4</sup>. The rule also applies to re-enactment by subordinate legislation made after 1978<sup>5</sup>.

Where an Act or subordinate legislation passed or made after 1978 repeals and re-enacts, with or without modification, a previous enactment (including one contained in subordinate legislation), then, unless the contrary intention appears, in so far as any subordinate legislation made or other thing done under the enactment so repealed, or having effect as if so made or done<sup>6</sup>, could have been made or done under the provision re-enacted, it is to have effect as if made or done under that provision<sup>7</sup>.

It has been said that, where a provision in one statute re-enacts a provision of an earlier statute, it cannot have the effect of repealing an intermediate provision which is inconsistent with the first<sup>8</sup>, but it is clear that this statement cannot be accepted without qualification even where the re-enactment involves no modification<sup>9</sup>.

Where an Act of limited operation is repealed by one which expressly re-enacts its provisions in an amended form, it may be presumed that the operation of the re-enacted provision was not intended to be applied to classes of persons hitherto not subject to it unless the contrary intention is shown<sup>10</sup>. An Act which is expressly explanatory or declaratory of the meaning of an earlier Act may be presumed to be confined to the same subject matter as that Act<sup>11</sup>.

1 For the meaning of 'Act' see PARA 1232 note 2 ante.

2 Interpretation Act 1978 ss 17(1), 22(1), Sch 2 para 2.

3 Ibid ss 17(2)(a), 22(1), Sch 2 para 3. The significance of this rule where the repealed enactment has been incorporated with another by reference is mentioned in PARA 1312 post, but the rule applies wherever there is a

reference in any Act to the repealed provisions, whether or not the effect of the reference is to incorporate them with that Act. Thus, where an Act defined 'factory' by reference to the Factory and Workshop Act 1895, the repeal and re-enactment of the Factory and Workshop Act 1895 by the Factory and Workshop Act 1901 (now itself repealed), which contained an extended definition of 'factory', was held to be a re-enactment with modification for the purposes of the rule, so that the reference in the Act of 1895 was to be construed as a reference to the Act of 1901 and the operation of the Act of 1895 was correspondingly extended: *Stevens v General Steam Navigation Co Ltd* [1903] 1 KB 890, CA; cf *Sweet v Bishop of Ely* [1902] 2 Ch 508. 'Modification' includes modification by way of addition: *R v Goswami* [1969] 1 QB 453, [1968] 2 All ER 24, CA; *Lovell v Archer* [1971] RTR 237, DC. The rule which is now in the Interpretation Act 1978 s 17(2)(a) has been applied to a reference to another enactment where the reference is incorporated in another expression: see *R v Goswami* supra ('enactments relating to customs').

4 See the Interpretation Act 1978 s 23(2), (3). The reference may date from before 1979 but the rule nevertheless applies. For the construction of an express provision relating to documents in a pre-1979 Act, with respect to which it was held that the words 'any document' must mean 'any document existing at the passing of this Act', see *Meek v Powell* [1952] 1 KB 164, [1952] 1 All ER 347, DC.

5 Interpretation Act 1978 ss 23(1), 26.

6 The words 'or having effect as if made' apply in particular where there is a second or subsequent repeal and re-enactment of particular provisions and *ibid* s 17(2)(b), or its equivalent, has applied on a previous occasion.

7 *Ibid* ss 17(2)(b), 23(2). It appears to be the practice for s 17(2)(b) to be relied on principally where there are things the continuing validity of which might be in question. Where there are completed transactions, express provision may be made (see eg the New Towns Act 1981 s 81, Sch 11 para 2), although this may not always be strictly necessary.

8 See *R v Minister of Health, ex p Villiers* [1936] 2 KB 29 at 44, [1936] 1 All ER 817 at 823, citing *Morisse v Royal British Bank* (1856) 1 CBNS 67.

9 See *Hall v Arnold* [1950] 2 KB 543, [1950] 1 All ER 993, DC. In each of the cases cited in note 8 supra the first provision was general, and the second a special provision creating an exception out of it for a particular case, and the fact that the third provision merely re-enacted the first could properly have been regarded as supporting the application of the maxim *generalia specialibus non derogant* (general things do not derogate from special things: see PARA 1300 ante). In *Hall v Arnold* supra, the first provision was special, and the second a general provision which probably repealed it despite that maxim. Assuming it to have done so, to have held that it was not itself repealed in relation to the particular case on the re-enactment of the first provision by the third would have been to deprive the latter of all effect. The question in any case would appear to be whether the fact that the re-enactment is a later enactment is outweighed, where it is possible to apply it, by the presumption that a consolidation is not intended to change the law: see PARA 1417 post.

10 *Brown v McLachlan* (1872) LR 4 PC 543 at 550.

11 *Re Perrin* (1842) 2 Dr & War 147 at 161; *Minet v Leman* (1855) 20 Beav 269 (on appeal 7 De GM & G 340); *Cox v Andrews* (1883) 12 QBD 126; *A-G v Morgan* [1891] 1 Ch 432 at 462, CA. As to declaratory enactments see PARA 1236 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(i) Nature and Types of Repeal/1304. Repeal by temporary Act.

### 1304. Repeal by temporary Act.

If a temporary Act<sup>1</sup> contains an express or implied repeal, its effect on the enactment purported to be repealed may be to suspend its operation, but it clearly will not repeal it permanently<sup>2</sup>. However Parliament may intend the character of an Act to be temporary in some respects and permanent in others. Where, therefore, new provisions are introduced by an Act which, although expressed to be of limited duration, purports expressly to repeal existing provisions, it is a question of construction whether the repeal is to be taken at face value<sup>3</sup>.

1 For the meaning of 'temporary Act' see PARA 1216 ante.

2 As to the suspension of Acts generally see PARA 1315 post.

3 The presumption in such a case is that the limitation of time, although expressed in relation to the Act as a whole, is intended to apply to the new substantive provisions only, the repealed provisions being abrogated completely so as not to revive on their expiry: *Warren v Windle* (1803) 3 East 205 at 211; *Taylor v New Windsor Corp* [1898] 1 QB 186 at 204-205, CA (affd sub nom *New Windsor Corp v Taylor* [1899] AC 41, HL). If, however, it is clear that the temporary limitation is intended to govern the whole of the later Act, the words of repeal must be construed as merely suspensory: *R v Rogers* (1809) 10 East 569 at 573. Unless a contrary intention appears, the repeal of an Act does not now revive anything not in force: Interpretation Act 1978 s 16(1)(a). For these purposes, after 1978, the expiry of a temporary enactment is treated as a repeal: see ss 16(2), 22(1); and PARA 1314 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(i) Nature and Types of Repeal/1305. Repeal etc by subordinate legislation.

### **1305. Repeal etc by subordinate legislation.**

Parliament may in an Act require or authorise the repeal or amendment of that or another Act by ministerial order<sup>1</sup>. Often the power is confined in terms to provisions contained in local, or local and personal, Acts<sup>2</sup> and, the enabling Act having made general provision with respect to a matter previously regulated by a variety of such Acts, is granted to the minister responsible for administering the new provision for the limited purpose of avoiding redundancy and inconsistency<sup>3</sup>. The power is granted to the minister because the enabling Act cannot conveniently deal with the consequential amendment and repeal of the various relevant Acts<sup>4</sup>. Sometimes the power to repeal or amend Acts may be considerably wider, both as respects the purposes for which it is exercisable and the classes of Acts to which it extends<sup>5</sup>. In some cases the power is confined in terms to enactments passed before the commencement of the enabling Act, and in others not, but this particular limitation is likely to be the proper construction of any provision in which it is not expressed<sup>6</sup>.

An enabling Act may authorise the making of whatever provision may be considered expedient for securing certain objects of a general nature, and the question whether interference with other Acts was envisaged might, if no more were said, present some difficulty. However, in such cases it is the practice of Parliament to add specific authority for the making of any type of provision the validity of which might otherwise be doubted, and provision for the amendment or repeal of enactments is customarily so treated<sup>7</sup>. If it is further enacted<sup>8</sup> that the validity of any provision made in exercise of the powers conferred is not to be affected by its inconsistency with any Act, it is put beyond doubt that repeals may be effected by implication also, but the principles to be applied are the same as those governing repeals by Acts, and only if reconciliation is impossible will a provision made in exercise of those powers be held to repeal an earlier statutory provision<sup>9</sup>.

1 See eg the Scotland Act 1978 s 85(2), which required the Secretary of State to lay before Parliament a draft Order in Council for the repeal of an Act.

2 As to local and personal Acts see PARA 1211 et seq ante. See *R v LCC* [1893] 2 QB 454, CA.

3 See eg the Local Government, Planning and Land Act 1980 s 22; the Civil Aviation Act 1982 s 46(9). In such a case, the failure of the enabling Act to deal expressly with its effect on local Acts constitutes a departure from the normal practice, but the granting of a power of repeal makes possible the avoidance of the uncertainty

caused by reliance on the doctrine of implied repeal, the operation of which is in any event extremely limited where the earlier enactment is particular, and the later general, in character: see PARA 1300 ante.

4 Thus eg the Local Government Act 1972 s 252 confers power on Her Majesty to make an Order in Council modifying any public general Act so far as appears to be necessary for applying to the new local authorities created by that Act enactments which applied to their predecessors.

5 For an example of powers exercisable with respect to any enactment or instrument (including Northern Ireland legislation) passed before the Act conferring the power see the British Nationality Act 1981 s 52(2). For another example of a widely-drawn power see the Deregulation and Contracting Out Act 1994 s 1.

6 There would appear to be no authority directly in point, but see *Meek v Powell* [1952] 1 KB 164 at 169, [1952] 1 All ER 347 at 349, DC, cited in PARA 1303 ante. See also the Emergency Powers (Defence) Act 1939 s 1(2)(d) (repealed), which conferred powers exercisable with respect to 'any enactment', and the Emergency Powers (Defence) Act 1940 s 1(2) (repealed), which provided that the expression 'enactment' in the Emergency Powers (Defence) Act 1939 s 1(2)(d) (repealed), should mean any enactment passed before the commencement of the Emergency Powers (Defence) Act 1940.

7 Thus, despite the width of the objects ('the public safety', 'the defence of the realm' etc) specified in the Emergency Powers (Defence) Act 1939 s 1(1) (repealed), provision for the amendment, suspension and application of other enactments was specifically authorised by s 1(2)(d) (repealed).

8 Eg by the Emergency Powers (Defence) Act 1939 s 1(4) (repealed).

9 See *Perry v London General Omnibus Co* [1916] 2 KB 335 at 345, CA; *R v National Arbitration Tribunal, ex p Bolton Corp* [1941] 2 KB 405 at 415, CA.

## UPDATE

### 1305 Repeal etc by subordinate legislation

NOTE 1--Such a power must be construed narrowly and strictly: *Bairstow v Queen's Moat Houses plc* [1998] 1 All ER 343, CA.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(ii) Statutory Savings on Repeal/A. GENERAL SAVINGS/1306. Saving for earlier repeals etc.

## (ii) Statutory Savings on Repeal

### A. GENERAL SAVINGS

#### 1306. Saving for earlier repeals etc.

Where an Act passed at any time after 1850 repeals a repealing enactment, the repeal does not revive any enactment previously repealed unless words are added reviving it<sup>1</sup>. Where an Act passed at any time after 1889 repeals an enactment<sup>2</sup>, the repeal does not, unless the contrary intention appears<sup>3</sup>, revive anything not in force or existing at the time at which the repeal takes effect<sup>4</sup>.

1 Interpretation Act 1978 ss 15, 22(1), Sch 2 para 2. As to the position before 1850 see PARA 1296 ante. For the meaning of 'Act' see PARA 1232 note 2 ante. The words 'repealing enactment' include an enactment effecting a repeal by implication (described in PARAS 1299-1302 ante): see *DPP v Lamb* [1941] 2 KB 89 at 103, [1941] 2 All ER 499 at 507, DC; and also one which takes a particular case completely out of the operation of an existing enactment, since this is in effect a partial repeal: see *Mirfin v Attwood* (1869) LR 4 QB 333. No repeal is involved where one enactment merely modifies another in its application to a particular case, or makes its application to

that case dependent on the fulfilment of conditions; and it follows that, on the repeal of the later enactment, the revival of the former free from the modifications or conditions is not prevented: see *Glaholm v Barker* (1866) 1 Ch App 223 (modifications); *Mount v Taylor* (1868) LR 3 CP 645 (conditions).

2 The repeal of an enactment includes in this context the partial repeal involved where a particular case is wholly excluded from its operation: see *Heston and Isleworth UDC v Grout* [1897] 2 Ch 306 at 313, CA. A substitution is a repeal in so far as it removes words: *Moakes v Blackwell Colliery Co Ltd* [1925] 2 KB 64, CA; *Briggs v Thomas Dryden & Sons* [1925] 2 KB 667, CA. Cf note 1 supra.

3 A contrary intention is not to be inferred from a 'double repeal', where an Act says of a particular enactment both that it 'is hereby repealed' and that it 'shall cease to have effect': see PARA 1298 ante.

4 Interpretation Act 1978 ss 16(1)(a), 22(1), Sch 2 para 3. This provision covers all that is covered by s 15 (see the text and note 1 supra), and many other matters besides and is expressed to be without prejudice to s 15. It prevents eg the revival of the validity of a void contract or instrument (cf para 1296 ante): see *Boddington v Wisson* [1951] 1 KB 606 at 611, [1951] 1 All ER 166 at 168-169, CA; *Coates v Diment* [1951] 1 All ER 890. It has been held that the Interpretation Act 1978 s 16(1)(a) also applies to a common law rule which had been abrogated by the repealed Act and was therefore 'not in force or existing' at the time the repeal took effect: *D v D* [1979] Fam 70, [1979] 3 All ER 337. However this seems contrary to principle: see *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Council of Civil Service Unions* [1984] IRLR 309; revsd not affecting this point [1984] IRLR 353, CA; sub nom *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, [1984] 3 All ER 935, HL (prerogative power held to revive on repeal of ousting enactment).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(ii) Statutory Savings on Repeal/A. GENERAL SAVINGS/1307. Saving for other previous operation.

### **1307. Saving for other previous operation.**

Where an Act passed at any time after 1889 repeals an enactment<sup>1</sup>, the repeal does not, unless the contrary intention appears<sup>2</sup>, affect the previous operation of the enactment repealed<sup>3</sup> or anything duly done or suffered under that enactment<sup>4</sup>.

1 See PARA 1306 note 2 ante.

2 See PARA 1306 note 3 ante.

3 In *Coates v Diment* [1951] 1 All ER 890 (see PARA 1306 note 4 ante), it was pointed out that this provision (which was formerly contained in the Interpretation Act 1889) prevented the revival of the contract in question.

4 Interpretation Act 1978 ss 16(1)(b), 22(1), Sch 2 para 3. For the meaning of 'Act' see PARA 1232 note 2 ante. For an example of reliance on this provision (which was formerly contained in the Interpretation Act 1889), see *Heston and Isleworth UDC v Grout* [1897] 2 Ch 306 at 313, CA. See also *Foster v Pritchard and Whitroe* (1857) 2 H & N 151; *R v West Riding of Yorkshire Justices* (1876) 1 QBD 220 (reliance on express savings in similar terms); and cf *Hutchinson v Jauncey* [1950] 1 KB 574, [1950] 1 All ER 165, CA. This provision preserved the effect of a noise nuisance notice served under the Control of Pollution Act 1974 s 58(1) before its repeal by the Environmental Protection Act 1990 ss 162(2), 164(2), Sch 16 Pt III: *Aitken v South Hams District Council* [1995] 1 AC 262, [1994] 3 All ER 400, HL, following *Barnes v Eddleston* (1876) 1 Ex D 102, CA. This saving effect had been overlooked in *R v Folkestone Magistrates' Court, ex p Kibble* [1993] Crim LR 704, which was followed by the Divisional Court in *Aitken v South Hams District Council* supra. As to the position where the previous operation was a repeal see PARA 1306 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(ii) Statutory Savings on Repeal/A. GENERAL SAVINGS/1308. Saving for accrued rights, etc.

### 1308. Saving for accrued rights, etc.

Where an Act passed at any time after 1889 repeals an enactment<sup>1</sup>, the repeal does not, unless the contrary intention appears<sup>2</sup>, affect any right<sup>3</sup>, privilege, obligation or liability<sup>4</sup> acquired, accrued or incurred under that enactment, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced as if the repealing Act had not been passed<sup>5</sup>.

1 See PARA 1306 note 2 ante.

2 See PARA 1306 note 3 ante.

3 For examples of the preservation of rights, and proceedings in respect of rights, see *Re Lush & Co* (1913) 108 LT 450; *Re Wilkinson Sword Co Ltd* (1913) 29 TLR 242; *Lewis v Hughes* [1916] 1 KB 831, CA; *Hamilton Gell v White* [1922] 2 KB 422, CA; *Costello v Brown* (1924) 94 LJBK 220, CA; and see also *Noronha v Damji Devji* [1954] AC 49, PC (saving in similar terms in Kenya Ordinance). A saving of rights in these terms is concerned not with 'the mere right (assuming it to be properly so called) existing in the members of the community, or any class of them, to take advantage of an enactment' (*Abbott v Minister for Lands* [1895] AC 425 at 431, PC), but with specific rights of individuals who have, before the repeal, satisfied any conditions necessary for their acquisition (*Hamilton Gell v White* supra at 431; see also *Re Tithe Act 1891*, *Roberts v Potts*, *Jones v Cooke* [1894] 1 QB 213, CA, and *Sifam Electrical Instrument Co Ltd v Sangamo Weston Ltd* [1971] 2 All ER 1074 at 1079 per Graham J; cf *Re Convex Ltd's Patent* [1980] RPC 423, CA). In particular, there is no preservation of liberty to apply for a right which may be freely granted or withheld, or of proceedings to determine whether or not such a right should be granted, for such liberty is not an accrued right or privilege: *Director of Public Works v Ho Po Sang* [1961] AC 901 at 922, [1961] 2 All ER 721 at 731, PC. See also *Boddington v Wisson* [1951] 1 KB 606 at 612, [1951] 1 All ER 166 at 169, CA. However, a right may be an acquired right even though it is only inchoate or contingent, provided that it is more than a mere hope or expectation: see *Free Lanka Insurance Co Ltd v Ranasinghe* [1964] AC 541, [1964] 1 All ER 457, PC. See also *Moray County Council, Petitioners* 1962 SLT 236, where a right to payment was held to have accrued even though no demand had been made and a repealed statute provided only for payment 'on demand'. Moreover, although a right under a repealed enactment may indeed be saved, the effect of the substantive provisions of the repealing enactment may be to make the continued existence meaningless: see eg *Thackray v Central Land Board* [1952] 1 All ER 1374, [1952] WN 285. For a case in which a right to plead a limitation statute was treated as an accrued right see *Yew Bon Tew v Kenderaan Bas Mara* [1983] 1 AC 553, [1982] 3 All ER 833, PC.

4 As to the preservation of liabilities, and proceedings in respect of them, see *Heston and Isleworth UDC v Grout* [1897] 2 Ch 306 at 313, CA; *Re A Debtor, ex p Debtor (No 490 of 1935)* [1936] Ch 237 at 242, CA. See also *Barnes v Eddleston* (1876) 1 Ex D 102, CA (express saving in similar terms); *R v Fisher* [1969] 1 All ER 100, [1969] 1 WLR 8, CA; *Ogden Industries Pty Ltd v Lucas* [1970] AC 113, [1969] 1 All ER 121, PC.

5 Interpretation Act 1978 ss 16(1)(c), (e), 22(1), Sch 2 para 3. As to the meaning of a reference to proceedings brought under a repealed Act see *Selangor United Rubber Estates Ltd v Cradock (No 4)* [1969] 3 All ER 965 at 977, [1969] 1 WLR 1773 at 1783. For the meaning of 'Act' see PARA 1232 note 2 ante.

## UPDATE

### 1308 Savings for accrued rights, etc

NOTE 3--See also *R v Dover Magistrates' Court, ex p Webb* (1998) 162 JPR 295 (application for forfeiture order); and *Marsal v Apong* [1998] 1 WLR 674, PC (statute could not be interpreted retrospectively so as to impair an existing right or obligation).

NOTE 5--The Immigration Rules are not delegated or subordinate legislation, or 'rules' to which the 1978 Act applies: see *Odelola v Secretary of State for the Home Department* [2009] UKHL 25, [2009] 3 All ER 1061; and BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 83.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(ii) Statutory Savings on Repeal/A. GENERAL SAVINGS/1309. Saving for penalties, etc.

### **1309. Saving for penalties, etc.**

Where an Act passed at any time after 1889 repeals an enactment<sup>1</sup>, the repeal does not, unless the contrary intention appears<sup>2</sup>, affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that enactment, or affect any investigation, legal proceeding or remedy in respect of any such penalty, forfeiture or punishment; and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed<sup>3</sup>.

1 See PARA 1206 note 2 ante.

2 See PARA 1206 note 3 ante.

3 Interpretation Act 1978 ss 16(1)(d), (e), 22(1), Sch 2 para 3; and see *Postlethwaite v Katz* (1943) 59 TLR 248. This provision does not apply where a penalty-creating provision is repealed, but the offence-creating provision is not, since it only saves a penalty etc for an offence against the enactment repealed: see *Porter v Manning* (1984) Times, 23 March (repeal of the Road Traffic Act 1972 s 93(3), which created no offence but merely provided for penalties). As to the meaning of a reference to proceedings brought under a repealed Act see *Selangor United Rubber Estates Ltd v Cradock (No 4)* [1969] 3 All ER 965 at 977, [1969] 1 WLR 1773 at 1783. For the meaning of 'Act' see PARA 1232 note 2 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(ii) Statutory Savings on Repeal/B. SPECIFIC SAVINGS/1310. Specific savings.

## **B. SPECIFIC SAVINGS**

### **1310. Specific savings.**

It may prove necessary in a particular case to supplement or vary the general statutory savings<sup>1</sup> by particular savings<sup>2</sup>. If an Act introduces new provisions and repeals existing ones with savings, the savings will not be effective to preserve anything the continued existence of which is incompatible with the new provisions<sup>3</sup>.

Since the question is always the intention of the legislator, a saving may be made not only expressly, but also by implication<sup>4</sup>.

1 See eg the Rent Act 1977 s 155(3), Sch 24 para 30. For the general statutory savings see PARAS 1306-1309 ante.

2 It may, for instance, be desirable that subordinate legislation should continue in force notwithstanding the repeal of the provisions under which it was made. It will not so continue unless saved (see PARA 1296 ante), and the general statutory savings do not assist in this respect (see PARA 1525 post), although in cases of repeal and re-enactment it may be saved by virtue of the Interpretation Act 1978 s 17(2)(b): see PARA 1303 ante. For an example of a number of express savings, coupled with a saving for the general provisions, see the Customs and Excise Management Act 1979 s 177(4), (5), Sch 7 (amended by the Isle of Man Act 1979 s 14(5), Sch 2; the Value Added Tax Act 1983 s 50(2), Sch 11). Until 1958, statute law revision Acts were noteworthy as respects savings. Their object being to do no more than strike out obsolete and unnecessary enactments (see PARA 1227 ante), it had become the practice before 1890 for such Acts to contain savings of extreme length and

complexity which were designed to secure that no change in the law would result even if, through inadvertence, there should be included amongst their repeals an enactment still capable of having effect. These savings, known as the 'Westbury savings' (after Lord Westbury, who was primarily responsible for their development), reached their final form in the Statute Law Revision (No 2) Act 1888 s 1 (repealed), and are to be found in every subsequent statute law revision Act down to and including the Statute Law Revision Act 1953 (repealed). It was then decided that they should be dispensed with, and reliance placed purely on the general provisions, and this was put into effect on the occasion of the next such Act, namely the Statute Law Revision Act 1958. See further the minutes of evidence published with the Seventh Report of the Joint Committee on Consolidation and Statute Law Revision Bills for the Session 1957-58 (HL Papers (1957-58) nos 5-VI, 108-I; HC Paper (1957-58) no 209-I).

3 See *Re R* [1906] 1 Ch 730 at 736, CA; *Rattan Singh v Income Tax Comr* [1967] 1 All ER 999, [1967] 1 WLR 625, PC. Cf *Hough v Windus* (1884) 12 QBD 224 at 231, 236, CA.

4 In *Wigram v Fryer* (1887) 36 ChD 87, North J appears to have been unsure whether to find in the repealing enactment an implied saving for certain powers granted by the enactment repealed, or an implied grant of similar powers. For a refusal to imply a saving see *Sheffield Corpn v Sheffield Electric Light Co* [1898] 1 Ch 203. As to statutory implications see PARA 1234 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(iii) Effect of Repeal on Other Enactments/1311. Effect of partial repeal on remainder of Act.

### **(iii) Effect of Repeal on Other Enactments**

#### **1311. Effect of partial repeal on remainder of Act.**

The principle that an enactment which is repealed is to be treated as if it had never existed<sup>1</sup> does not mean that other enactments in the same Act are thereafter necessarily to be read as if it had never existed, for Parliament could not be supposed to intend the repeal of one enactment to give a different meaning to a separate and distinct enactment which is contained in the same Act but with which it does not intend to deal<sup>2</sup>. It may, however, be necessary to consider the effect of the application of the relevant provision of the Interpretation Act 1978<sup>3</sup> which applies to enactments passed after the end of 1978 or any similar provision included in a repealing enactment passed before that time.

1 See PARA 1296 ante.

2 See the rule in *A-G v Lamplough* (1878) 3 Ex D 214 at 223 per Kelly B (dissenting); upheld on appeal 3 Ex D 224 at 231, CA; and PARA 1291 ante.

3 I.e the Interpretation Act 1978 s 20(2): see PARA 1295 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(iii) Effect of Repeal on Other Enactments/1312. Repeal of incorporated enactment.

#### **1312. Repeal of incorporated enactment.**

There is a further limitation on the principle that a repealed enactment is to be treated as if it had never existed<sup>1</sup>, which is where the enactment has come to form part of two or more Acts. This may result either from provision in one Act for its incorporation with subsequent Acts of a



particular description<sup>2</sup> or, as is more frequently the case today, from the incorporation of existing enactments by reference<sup>3</sup>. The rule in such cases is that the repeal of the parent Act does not affect the continued operation of the enactments in question as part of any other Act unless it is expressed to extend to them as incorporated or there is an implication that it was intended to do so<sup>4</sup>. Also, where the subsequent interference with the incorporated enactments amounts to less than their total repeal, the question arises whether it might not have been the intention of the incorporating Act to adopt them as for the time being in force<sup>5</sup>, and if they are repealed and re-enacted, with or without modifications, there is a statutory presumption in aid of the view that they are thenceforth to be regarded as incorporated in their new form<sup>6</sup>.

1 See PARAS 1296, 1311 ante.

2 Provision of this nature is to be found eg in the various Clauses Acts: see PARA 1229 ante.

3 See PARA 1257 ante.

4 See *R v Merionethshire Inhabitants* (1844) 6 QB 343 (followed in *R v Brecon Inhabitants* (1849) 15 QB 813); *R v Smith* (1873) LR 8 QB 146 at 149, 151; *Clarke v Bradlaugh* (1881) 8 QBD 63 at 69, CA; *Jenkins v Great Central Rly Co* [1912] 1 KB 1 at 8; and cf *Dudley Gas Co v Warmington* (1881) 50 LJMC 69. In none of these decisions is implication in fact mentioned, but it is clear that if there is an inference that the repeal, although not expressed to do so, was intended to extend to the enactments as incorporated, that intention must be observed: see PARA 1234 ante. It will usually be possible to find such an intention in Acts passed after 1978 because of the Interpretation Act 1978 s 20(2): see PARA 1295 ante. The intention may also be inferred from similar provisions included in repealing enactments passed before that time.

5 Cf *Secretary of State for India v Hindustan Co-operative Insurance Society* (1931) 58 LR Ind App 259, PC, where it was held that an addition to the provisions incorporated, unless it was expressly made applicable to the incorporating Act, was not to be deemed to be incorporated in it, at all events if it could function effectively without the addition.

6 See the Interpretation Act 1978 s 17(2)(a); and PARA 1303 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(4) REPEAL OF AN ACT OR ENACTMENT/(iii) Effect of Repeal on Other Enactments/1313. Repeal of amending enactment.

### **1313. Repeal of amending enactment.**

Where an Act repeals an enactment which itself amends an earlier Act, a question may arise as to whether the repeal is intended to affect the earlier Act. The intention of the repealing Act must be discovered in the usual way, but in the absence of express words, its repeal of the amending enactment will not revive any enactment which the latter has repealed<sup>1</sup>, or anything not in force<sup>2</sup>, and there may be other savings in respect of pending or past transactions<sup>3</sup>. Further, where a textual amendment<sup>4</sup> is repealed it is unlikely that an intention to cancel the effect of the amendment would be found unless there was a corresponding repeal of the earlier Act<sup>5</sup>. In such a case the context of the repeal usually indicates that the repealing Act is intended to do no more than remove the machinery by which words have come to be inserted in another enactment, but is not intended to affect the continuance in force of these words<sup>6</sup>. Where, however, a non-textual amendment is repealed it will almost always be obvious that its repeal is intended to cancel its effect in relation to the enactment it amends.

1 See the Interpretation Act 1978 s 15; and PARA 1306 ante.

2 See *ibid* s 16(1)(a); and PARA 1306 ante.

3 See PARAS 1307-1310 ante.

4 In an addition, substitution or deletion: see PARA 1289 ante.

5 Sometimes express savings are inserted: see eg the Rent Act 1977 s 155(3), Sch 24 para 30.

6 The repeal of only part of an amendment is unlikely to be intended to relate only to machinery: see eg the Statute Law (Repeals) Act 1974 s 1, Schedule Pt III, which repealed part of the amendment made by the Compulsory Purchase Act 1965 s 38, Sch 6 to the Civil Aviation Act 1949 s 19(5) (repealed), which is re-enacted in the Civil Aviation Act 1982 s 30(8).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(5) EXPIRY, SUSPENSION AND REVIVAL/1314. Effect of expiry of temporary Act.

## **(5) EXPIRY, SUSPENSION AND REVIVAL**

### **1314. Effect of expiry of temporary Act.**

The most important of the general statutory savings<sup>1</sup> apply to the expiry of temporary Acts<sup>2</sup> passed after 1978<sup>3</sup>. Subject to those savings, the effect of the expiry of a temporary Act is a matter of construction of the Act<sup>4</sup>. Apart from differences created by statute, the juridical effects of repeal and expiry are identical<sup>5</sup>, though there is said to be no presumption that an Act is to be treated on expiry as dead for all purposes<sup>6</sup>.

1 See the Interpretation Act 1978 s 16; and PARAS 1306-1310 ante.

2 As to temporary Acts generally see PARAS 1216, 1281 ante; and as to repeal by temporary Acts see PARA 1304 ante.

3 See the Interpretation Act 1978 s 16(2).

4 *Steavenson v Oliver* (1841) 8 M & W 234 at 241 per Parke B. The authorities relating to expiry are few, but see *Spencer v Hooton* (1920) 37 TLR 280; *R v Ellis, ex p Amalgamated Engineering Union* (1921) 125 LT 397, DC (holding that a special jurisdiction conferred by certain temporary Acts ceased absolutely on their expiry, to the detriment of pending proceedings). Cf *Wicks v DPP* [1947] AC 362, [1947] 1 All ER 205, HL, where the Act in question provided expressly that its operation should not be affected on expiry as respects previous acts or omissions and was held to have authorised thereby the prosecution after expiry of offences committed before that time. See also *Ex p Higginbotham* (1840) 9 Dowl 200.

5 See *Moakes v Blackwell Colliery Co* [1925] 2 KB 64 at 70, CA.

6 *Spencer v Hooton* (1920) 37 TLR 280 at 281. Cf para 1296 ante. As to the revival of an expired Act see PARA 1316 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(5) EXPIRY, SUSPENSION AND REVIVAL/1315. Suspension of an Act.

### **1315. Suspension of an Act.**

The operation of the whole or part of an Act may be suspended in terms by a later Act<sup>1</sup> or a later Act may have no more than a suspensory effect on an earlier Act by reason of the fact that it is itself only temporary in character<sup>2</sup>. An Act may also be suspended by subordinate legislation if power in that behalf is conferred by the enabling Act<sup>3</sup>.

An Act cannot be suspended by the executive<sup>4</sup>.

1 Thus eg the Northern Ireland Act 1974 s 1(3), Sch 1 (amended by the Statutory Rules (Northern Ireland) Order 1979, SI 1979/1573, art 11(1), Sch 4 para 14), suspended in some respects the operation of the Northern Ireland Constitution Act 1973. See also the Social Security (No 2) Act 1980 s 1(1) (repealed). The effect of suspension depends on the terms of the enactment by which it is implemented. As to the revival of a suspended Act see PARA 1316 post.

2 See PARA 1314 ante.

3 Such power was conferred eg by the Drought Act 1976 s 1(3)(e) (repealed). See also the Social Security (No 2) Act 1980 s 1(4) (repealed).

4 In *Customs and Excise Comrs v Mechanical Services (Trailer Engineers) Ltd* [1979] 1 All ER 501, [1979] 1 WLR 305, CA, Browne LJ (at 507 and 312) dismissed the argument that tax anomalies could be ironed out by not enforcing the law: it 'seems to raise echoes of the seventeenth century, when one of the great issues between King and Parliament was the general dispensing power'. See also *R v Customs and Excise Comrs, ex p Cook* [1970] 1 WLR 450 at 454-455; *Wicks v Firth (Inspector of Taxes)* [1983] 2 AC 214 at 230, [1983] 1 All ER 151 at 154, HL; *R v IRC, ex p MFK Underwriting Agents Ltd* [sic] [1990] 1 WLR 1545 at 1574, 62 TC 607 at 648, DC. In *Yip Chiu-cheung v R* [1995] 1 AC 111 at 118, [1994] 2 All ER 924 at 928, PC, Lord Griffiths said that the following dictum of Gibbs CJ in the Australian case of *A v Hayden (No 2)* (1984) 156 CLR 532 at 540 'applies with the same force in England': 'It is fundamental to our legal system that the executive has no power to authorise a breach of the law and that it is no excuse for an offender to say that he acted under the orders of a superior officer'. The Bill of Rights (1689) declares any pretended exercise of such a power illegal, but it has to be remembered that taxes are given by Parliament as aids and supplies to the Crown (see PARA 1223 ante). After condemning the suspending and dispensing powers, the Bill of Rights goes on to refer as a separate matter to the 'levying of money for or to the use of the Crowne'. It does this in order to forbid taxation by pretence of prerogative, or 'for longer time or in other manner than the same is or shall be granted'; but does not deny the Crown's right to stay its grasp if it wishes to do so. As to extra-statutory concessions see PARA 1293 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/2. PASSING, COMMENCEMENT, AMENDMENT AND CESSATION/(5) EXPIRY, SUSPENSION AND REVIVAL/1316. Revival of expired or suspended Act.

### **1316. Revival of expired or suspended Act.**

An Act which has been suspended for a specified period, or during the continuance in force of a temporary Act, will revive automatically on the expiry of the period or Act in question<sup>1</sup>. Neither a suspended Act nor an Act which has been repealed will, however, revive automatically on the repeal of the enactment by which its suspension or repeal was effected<sup>2</sup>. The express revival of an Act which is in suspense, has been repealed or has expired is not common, but it may be effected either by another Act<sup>3</sup> or, if the enabling Act so permits, by subordinate legislation<sup>4</sup>. The revival of an expired enactment carries with it the revival of any enactment which, in relation to it, is a declaratory enactment or is otherwise explanatory<sup>5</sup>.

1 As to suspension see PARA 1315 ante.

2 See PARAS 1296, 1304 ante.

3 See eg the Planning and Compensation Act 1991 s 66, Sch 14 para 1. See also the Housing Act 1980 s 109, Sch 13 para 1 (repealed).

4 Thus the Civil Defence Act 1948 s 6(2) authorised the making of regulations, among other things, bringing again into force any provision of the Civil Defence Act 1939, the operation of which was suspended by the Civil Defence (Suspension of Powers) Act 1945 s 2(1), Schedule (repealed), or any other provision of the Civil Defence Act 1939 which was spent before the passing of the Civil Defence (Suspension of Powers) Act 1945 (repealed).

5 *Williams v Rougheed* (1759) 2 Burr 747. As to declaratory enactments see PARA 1234 ante.

## UPDATE

### 1316 Revival of expired or suspended Act

TEXT AND NOTES 4, 5--1939 and 1948 Acts repealed: Civil Contingencies Act 2004 Sch 2 paras 1, 3, Sch 3.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/3. EXTENT AND APPLICATION OF ACTS/1317. Jurisdiction of Parliament as to territories, persons and things.

## 3. EXTENT AND APPLICATION OF ACTS

### 1317. Jurisdiction of Parliament as to territories, persons and things.

There is a presumption that Parliament does not assert or assume jurisdiction which goes beyond the limits established by the common consent of nations, and, provided their language admits<sup>1</sup>, Acts are to be applied so as not to be inconsistent with the comity of nations or with the established principles of international law<sup>2</sup>. Thus general words in an Act may be presumed to be limited so as to have effect within the effective jurisdiction of Parliament only<sup>3</sup>.

1 By virtue of the sovereignty of Parliament (see PARA 1201 ante), the presumption mentioned must give way before a clearly expressed intention: *Mortensen v Peters* (1906) 8 F 93 at 103.

2 *Le Louis* (1817) 2 Dods 210; *The Annapolis* (1861) Lush 295; *R v Wilson* (1877) 3 QBD 42; *Bloxam v Favre* (1883) 8 PD 101 at 104 (affd (1884) 9 PD 130, CA); *Colquhoun v Brooks* (1889) 14 App Cas 493, HL; *Re AB & Co* [1900] 1 QB 541, CA; *Re Martin, Loustalan v Loustalan* [1900] P 211 at 233, CA; *Philipson-Stow v IRC* [1961] AC 727 at 745, [1960] 3 All ER 814 at 821, HL; *Rothmans of Pall Mall (Overseas) Ltd v Saudi Arabian Airlines Corp* [1981] QB 368, [1980] 3 All ER 359, CA. See also INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 12 et seq. For the meaning of 'Act' see PARA 1206 ante.

3 *Jefferys v Boosey* (1854) 4 HL Cas 815; *Wallace v A-G, Jeves v Shadwell* (1865) 1 Ch App 1 at 9; *Re Sawers, ex p Blain* (1879) 12 ChD 522, CA; *Re Busfield, Whaley v Busfield* (1886) 32 ChD 123 at 131, CA; *Colquhoun v Heddon* (1890) 25 QBD 129 at 135, CA; *Re AB & Co* [1900] 1 QB 541 at 544, CA; *Philipson-Stow v IRC* [1961] AC 727 at 745, [1960] 3 All ER 814 at 821, HL. As to the 'extent' of an Act see PARA 1318 post; as to the persons to whom it applies see PARA 1319 post; and as to the matters to which it applies see PARA 1320 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/3. EXTENT AND APPLICATION OF ACTS/1318. The geographical extent of an Act.

### 1318. The geographical extent of an Act.

The 'extent' of an Act is the geographical area throughout which it is law; so where it is said that an Act extends to a particular country, it is meant that it forms part of the law of that country. The presumption is that Acts passed by the Parliament of the United Kingdom are intended to extend to the whole of the United Kingdom<sup>1</sup>, that is, to England and Wales, Scotland<sup>2</sup> and Northern Ireland<sup>3</sup>, but not to any other place for which that Parliament has power to legislate. Thus it is not necessary as a matter of law for an Act to affirm expressly that a particular part of the United Kingdom is within its ambit<sup>4</sup>. On the other hand, no part of the United Kingdom will be taken to be excluded in the absence of express or implied provision to that effect<sup>5</sup>, and, conversely, an intention to include any other country which is within the legislative competence of Parliament must be clearly shown<sup>6</sup>.

No Act of the United Kingdom Parliament extends as part of the law of independent members of the Commonwealth<sup>7</sup> unless it is expressly declared that the member has requested and consented to its enactment<sup>8</sup>. Where a part of Her Majesty's dominions has attained fully responsible status, it has commonly been enacted that no such Act passed after the time of attaining that status is to extend to the territory as part of its law<sup>9</sup>.

1 See *R v Jameson* [1896] 2 QB 425 at 430, DC, per Lord Russell of Killowen CJ; *A-G for Alberta v Huggard Assets Ltd* [1953] AC 420 at 441, [1953] 2 All ER 951 at 955, PC, per Lord Asquith. For the meaning of 'Act' see PARA 1206 ante.

2 Before 1707 there was no power at Westminster to legislate for Scotland, but Acts passed by the Parliament of Great Britain between the union with Scotland in that year and that with Ireland in 1800 were subject as respects Scotland to the same presumption as those passed after 1800 by the Parliament of the United Kingdom.

3 Although undoubtedly falling within the competence of the English Parliament and subsequently the Parliament of Great Britain, Ireland had its own legislature and the presumption was that the Acts of those Parliaments were not intended to extend to Ireland: 1 Bl Com (14th Edn) 101-104. See also 6 Geo 1 c 5 (Dependency of Ireland on Great Britain) (1719) s 1 (repealed), by which the power 'to bind the Kingdom and people of Ireland' was expressly affirmed. Acts passed after the union in 1800 were presumed at first to have been intended to extend to the whole of Ireland, but the presumption became confined to Northern Ireland on the creation of the Irish Free State in 1922, although power to legislate for the rest of Ireland continued to exist so long as it remained a part of Her Majesty's dominions (ie until its secession, under the name of the Republic of Ireland, on 18 April 1949: see the Ireland Act 1949 s 1(1), (3); and COMMONWEALTH vol 13 (2009) PARA 728). Limited legislative power was accorded to the Parliament of Northern Ireland by the Government of Ireland Act 1920 s 4 (repealed) and by the Northern Ireland Act 1972 s 1 (repealed). Provision was made by the Northern Ireland Constitution Act 1973 ss 2, 4, for limited power to legislate by Measure to be conferred on the Northern Ireland Assembly, but the Assembly was dissolved under the Northern Ireland Act 1974 s 1 (as amended) and those legislative powers are now temporarily exercised by Her Majesty in Council under s 1(3), Sch 1 para 1. Provision was made by the Northern Ireland Act 1982 ss 1, 2, Sch 1 para 4 for new proposals for the exercise of limited legislative powers by the Northern Ireland Assembly to be submitted to the Secretary of State and for the general or partial suspension of direct rule, but at the date at which this volume states the law no such proposals have been implemented.

4 In practice, however, an Act extending to Northern Ireland is normally expressed to do so: see eg the Parliamentary Commissioner (Consular Complaints) Act 1981 s 2(2).

5 Exclusion is normally achieved by means of a separate 'extent' provision (eg 'This Act shall not extend to Scotland or to Northern Ireland'), but the terms of the substantive provisions, or their subject matter, may be such as to make separate provision unnecessary: see eg the Greater London Council (General Powers) Act 1981. As to the abolition of the Greater London Council see the Local Government Act 1985 s 1; and LONDON GOVERNMENT. See also *Westminster Fire Office v Glasgow Provident Investment Society* (1888) 13 App Cas 699 at 716, HL, per Lord Watson; and cf *Perth Water Comrs v McDonald* (1879) 6 R 1050.

6 1 Bl Com (14th Edn) 101; *New Zealand Loan and Mercantile Agency Co v Morrison* [1898] AC 349 at 357, PC, per Lord Davey; *A-G for Alberta v Huggard Assets Ltd* [1953] AC 420, [1953] 2 All ER 951, PC. Cf *R v Mount* (1875) LR 6 PC 283; *Callender, Sykes & Co v Lagos Colonial Secretary and Davies* [1891] AC 460 at 466-467, PC, per Lord Hobhouse. An Act extending to a country within that competence has overriding effect there. As to the power of the United Kingdom Parliament to legislate for the Channel Islands and the Isle of Man see COMMONWEALTH vol 13 (2009) PARAS 791, 799. As to the extension of enactments to other places outside the United Kingdom see COMMONWEALTH vol 13 (2009) PARA 867 et seq; and as to the consequences of leaving Her Majesty's dominions see COMMONWEALTH vol 13 (2009) PARA 721.

7 This description is here used to describe such countries as are within the Statute of Westminster 1931 s 1.

8 Ibid s 4. See *Manuel v A-G* [1983] Ch 77, [1982] 3 All ER 822, CA. Like provision is made by eg the Ceylon Independence Act 1947 s 1(1) (amended by the Sri Lanka Republic Act 1972 s 1(4)).

9 See eg the Sierra Leone Independence Act 1961 s 1(2). No Act of the Parliament of the United Kingdom passed after the coming into force of the Constitution Act 1982 (set out in the Canada Act 1982 s 1, Sch B) extends to Canada as part of its law: Canada Act 1982 s 2. No Act of the Parliament of the United Kingdom passed after the commencement of the Australia Act 1986 extends to the Commonwealth of Australia as established under the Commonwealth of Australia Constitution Act 1900, or to a state or territory of that commonwealth, as part of the law of that commonwealth, state or territory: Australia Act 1986 ss 1, 16(1).

## UPDATE

### 1318 The geographical extent of an Act

NOTE 3--Northern Ireland Act 1974 s 1, Sch 1, Northern Ireland Constitution Act 1973 ss 2, 4, and Northern Ireland Act 1982 repealed: Northern Ireland Act 1998 Sch 15. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 67A.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/3. EXTENT AND APPLICATION OF ACTS/1319. Persons to whom an Act applies.

### 1319. Persons to whom an Act applies.

The persons on whom a particular Act is intended to operate are described as the persons to whom it 'applies'<sup>1</sup>. Who these are is to be gathered from the language and purview of the Act<sup>2</sup>, but the presumption ('the presumption of applicability') is that Parliament is concerned with all conduct taking place within the territories to which the Act extends<sup>3</sup>, and with no other conduct<sup>4</sup>.

The presumption of applicability is of particular force in relation to criminal enactments<sup>5</sup>. The nationality of the offender is *prima facie* irrelevant, but in so far as the presumption of applicability safeguards the position of aliens as respects acts committed outside Her Majesty's dominions, it is part of the wider presumption that Parliament does not intend to breach the principles of public international law<sup>6</sup>. No such consideration applies, however, to British subjects and a number of criminal Acts have been held to apply to them wherever they may be<sup>7</sup>.

So far as non-criminal enactments are concerned<sup>8</sup>, the presumption of applicability has been acted upon many times<sup>9</sup>, although there is no particular reluctance either to hold that such enactments were intended to relate to matters arising outside Her Majesty's dominions so far as British subjects are concerned<sup>10</sup> or to include foreigners within the ambit of those clearly relating to such matters and intended to confer benefits<sup>11</sup>. By reason, however, of the presumption that Parliament intends to observe the principles of public international law, an Act will not, unless the contrary intention is clear, be construed as imposing liabilities on, or reducing the rights of, foreigners in respect of these matters<sup>12</sup>. Language of generality in a taxing Act may be limited by confining its operation to persons who become entitled by virtue of the laws of England and Wales<sup>13</sup>. New information technology, however, means that many activities performed in a territory may be controlled by persons who are outside the territory, so regulatory enactments may increasingly need to be construed as applying to such persons<sup>14</sup>.

Certain doctrines based on the comity of nations provide an exception to the rule that resident aliens are intended to be treated by the law in the same way as citizens, for example the doctrine of sovereign immunity<sup>15</sup>. The existence of sovereign immunity may render compliance with a statutory requirement impracticable and in such a case the requirement is necessarily subject to an implied exception<sup>16</sup>.

These various immunities and privileges are ascribed in international law to the principle of extritoriality<sup>17</sup>. In accordance with the principle of extritoriality, statutory powers may not apply to international organisations, even though resident within the territory to which the Act extends<sup>18</sup>.

1 For the meaning of 'person' see PARA 1382 post. For the meaning of 'Act' see PARAS 1206, 1232 ante.

2 See *R v Jameson* [1896] 2 QB 425 at 430, DC. The question is 'who... is within the legislative grasp, or intendment, of the statute under consideration?': *Clark (Inspector of Taxes) v Oceanic Contractors Inc* [1983] 2 AC 130 at 152, [1983] 1 All ER 133 at 144, HL, per Lord Wilberforce.

3 As to the geographical extent of an Act see PARA 1318 ante.

4 See eg *Tomalin v S Pearson & Son Ltd* [1909] 2 KB 61 at 64, CA, per Cozens-Hardy MR; *Re Dulles' Settlement Trusts, Dulles v Vidler* [1951] Ch 265 at 269, [1950] 2 All ER 1013 at 1014, CA, per Sir Raymond Evershed MR.

5 If the Act by which an offence is created extends only to England and Wales, it will be construed, in the absence of any indication of a contrary intention, as directed only at acts committed in England or Wales: see eg *Guyer v R* (1889) 23 QBD 100 at 107, DC, per Hawkins J. On the other hand, if it extends to the whole of the United Kingdom, or throughout Her Majesty's dominions, it will affect conduct in that wider range of countries, but not beyond them: see *R v Jameson* [1896] 2 QB 425 at 430, DC. As to criminal enactments see PARA 1239 ante.

6 As to this presumption see PARA 1317 ante.

7 As to criminal jurisdiction in connection with territorial waters, British ships and British subjects in foreign countries see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1057. Territorial waters are considered further in INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 123 et seq; and WATER AND WATERWAYS vol 100 (2009) PARA 31. As to offences on aircraft see AIR LAW vol 2 (2008) PARA 620 et seq. See also *Air India v Wiggins* [1980] 2 All ER 593, [1980] 1 WLR 815, HL.

8 As to the distinction between civil and criminal enactments see PARA 1239 ante.

9 As to the confinement of Acts to conduct within the territories concerned see *Rosseter v Cahlmann* (1853) 8 Exch 361; *Russell v Cambefort* (1889) 23 QBD 526, CA; *Tomalin v S Pearson & Son Ltd* [1909] 2 KB 61, CA; *Swifte v A-G for Ireland* [1912] AC 276, HL. As to the irrelevance of nationality so far as such conduct is concerned see *Jefferys v Boosey* (1854) 4 HL Cas 815 at 955-956 per Lord Cranworth LC; *Re Sawers, ex p Blain* (1879) 12 ChD 522 at 526, 528, 531, CA; *Krzus v Crow's Nest Pass Coal Co Ltd* [1912] AC 590, PC.

10 See eg the *Sussex Peerage Case* (1844) 11 Cl & Fin 85, HL; *Re De Wilton, De Wilton v Montefiore* [1900] 2 Ch 481; *Gold Star Publications Ltd v DPP* [1981] 2 All ER 257, [1981] 1 WLR 732, HL, where obscene material was held to be 'kept for publication for gain' even though the gain was to be made abroad.

11 See eg *Davidsson v Hill* [1901] 2 KB 606 (not following *Adam v British and Foreign SS Co Ltd* [1898] 2 QB 430); *The Esso Malaysia* [1975] QB 198, [1974] 2 All ER 705, where the Fatal Accidents Acts 1846 to 1959 (repealed: see now the Fatal Accidents Act 1976) were applied to the deaths of foreign seamen in a collision between two foreign ships outside the jurisdiction of the English courts.

12 'There is a presumption that, in the absence of a contrary intention express or implied, United Kingdom legislation does not apply to foreign persons or corporations outside the United Kingdom whose acts are performed outside the United Kingdom': *Arab Bank plc v Merchantile Holdings Ltd* [1994] Ch 71 at 82, [1994] 2 All ER 74 at 82 per Millett J. See also *Re Sawers, ex p Blain* (1879) 12 ChD 522, CA; *Cooke v Charles A Vogeler Co* [1901] AC 102, HL; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 3.

13 See *Philipson-Stow v IRC* [1961] AC 727 at 746, [1960] 3 All ER 814 at 821, HL, citing *Wallace v A-G* (1865) 1 Ch App 1 at 9; see also *Clark (Inspector of Taxes) v Oceanic Contractors Inc* [1982] 1 WLR 222, CA; *revsd* [1983] 2 AC 130, [1983] 1 All ER 133, HL. Cf *Collco Dealings Ltd v IRC* [1962] AC 1, [1961] 1 All ER 762, HL.

14 See eg *Re Seagull Manufacturing Co Ltd (in liquidation)* [1993] Ch 345 at 354, [1993] 2 All ER 980 at 984, CA.

15 *The Parlement Belge* (1880) 5 PD 197, CA; *Mighell v Sultan of Johore* [1894] 1 QB 149, CA. Later judicial development has withdrawn this protection where the property was used for purely commercial operations, dividing sovereign acts into acts *jure imperii* (in respect of which the sovereign continues to be entitled to immunity) and acts *jure gestionis* (in respect of which it is not): see *Littrell v United States of America (No 2)* [1994] 4 All ER 203, [1995] 1 WLR 82, CA; *Campania Naviera Vascongado v Steamship Cristina* [1938] AC 485, [1938] 1 All ER 719, HL; *The Porto Alexandre* [1920] P 30. See also the State Immunity Act 1978.

16 See eg *Westminster City Council v Government of the Islamic Republic of Iran* [1986] 3 All ER 284, [1986] 1 WLR 979; *Public Prosecutor v Oie Hee Koi* [1968] AC 829, [1968] 1 All ER 419, PC. The immunities and privileges enjoyed by diplomatic agents of foreign and Commonwealth countries are regulated by the Vienna Convention on Diplomatic Relations (Vienna, 18 April 1961; TS 19 (1965); Cmnd 2565) which came into force on 24 April 1964. Its main provisions were given the force of law in the United Kingdom by the Diplomatic Privileges Act 1964 s 2 (as amended): see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 265 et seq. Parallel provision in relation to consular officers is made by the Vienna Convention on Consular Relations (Vienna, 24 April 1963; TS 14 (1973); Cmnd 5219) (implemented by the Consular Relations Act 1968 s 1 (as amended): see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 290 et seq).

17 This is now perhaps more usually called extraterritoriality. However, the latter term is more appropriately reserved for the opposite concept of the application of an Act outside the territory to which it extends. The doctrine of extraterritoriality applies both to persons and their property and relates to all cases in which a state refrains from enforcing its laws within the territory of its jurisdiction. Extraterritoriality may apply to members of the armed forces of foreign states who are in authorised transit or temporary residence. The Visiting Forces Act 1952 allows certain matters concerning visiting forces in the United Kingdom to be dealt with by service courts applying their own law, instead of in accordance with local law: see ss 2, 3 (as amended). Similar provision is made in relation to certain international organisations: see the International Headquarters and Defence Organisations Act 1964 s 1. A statutory limitation period does not begin to run against a claimant while the immunity operates: *Musurus Bey v Gadban* [1894] 2 QB 352, CA.

18 See eg *Re International Tin Council* [1989] Ch 309, sub nom *MacLaine Watson & Co Ltd v Department of Trade and Industry, Re International Tin Council* [1988] 3 All ER 257, CA (power conferred by the Companies Act 1985 ss 665-674 (repealed) to order winding up of an unregistered company held not to apply to the international organisation known as the International Tin Council even though that body fell within the literal meaning of 'unregistered company' set out in the Companies Act 1985 s 665 (repealed) and its headquarters were within the United Kingdom).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/3. EXTENT AND APPLICATION OF ACTS/1320. Matters to which an Act applies.

### 1320. Matters to which an Act applies.

The presumption of applicability in relation to persons<sup>1</sup> also governs questions as to the property, transactions and other matters or things to which an Act<sup>2</sup> applies or does not apply. In general an Act applies to all matters and things which are situated or effected within the territories to which the Act extends<sup>3</sup>. Acts relating to land and land transactions are presumed to have been intended to bind all land within the territory to which they extend<sup>4</sup>, but not land situated elsewhere<sup>5</sup>. On the other hand, an Act relating to English contracts (that is contracts of which the proper law is English law) will apply irrespective of where the property to which any such contract relates is situated<sup>6</sup>. In taxing or other Acts references to money may be limited to sterling or may include foreign currencies, though the ordinary meaning of the term includes the latter<sup>7</sup>. The question is decided by reference to the wording and purpose of the Act<sup>8</sup>.

The doctrine of sovereign immunity excludes from the jurisdiction of the court property in the ownership, possession or control of a foreign sovereign state, or in which such a state claims an interest<sup>9</sup>.



- 1 See PARA 1319 ante.
- 2 For the meaning of 'Act' see PARA 1206 ante.
- 3 As to the extent of an Act see PARA 1318 ante.
- 4 *Birtwhistle v Vardill* (1840) 7 Cl & Fin 895, HL; *Freke v Lord Carbery* (1873) LR 16 Eq 461 at 466; *Duncan v Lawson* (1889) 41 ChD 394 at 398.
- 5 *British South Africa Co v Companhia de Mocambique* [1893] AC 602, HL. See also *A-G v Campbell* (1872) LR 5 HL 524 at 531.
- 6 *Henry Kendall & Sons (a firm) v William Lillico & Sons Ltd* [1969] 2 AC 31, [1968] 2 All ER 444, HL.
- 7 *The Halcyon the Great* [1975] 1 All ER 882 at 886, [1975] 1 WLR 515 at 520; applied in *Miliangos v George Frank (Textiles) Ltd* [1976] AC 443 at 464, [1975] 3 All ER 801 at 810, HL.
- 8 See eg *Capcount Trading v Evans (Inspector of Taxes)* [1993] 2 All ER 125, CA.
- 9 *Compania Naviera Vascongada v Steamship Cristina* [1938] AC 485, [1938] 1 All ER 719, HL; *United States of America and Republic of France v Dollfus Mieg et Cie SA and Bank of England* [1952] AC 582, [1952] 1 All ER 572, HL. As to the doctrine of sovereign immunity see PARA 1319 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/3. EXTENT AND APPLICATION OF ACTS/1321. Application to the Crown.

### **1321. Application to the Crown.**

Since an Act is made by the sovereign in Parliament<sup>1</sup> for the regulation of subjects, it follows that, unless the contrary intention appears, it does not bind the Crown itself. The Crown may however, again unless the contrary intention appears, take advantage of an Act if it chooses to do so. This principle, in both its aspects, is known as the doctrine of Crown immunity<sup>2</sup>.

The doctrine of Crown immunity is not limited to the monarch personally, but extends to all bodies and persons acting as servants or agents of the Crown, whether in its private or public capacity<sup>3</sup>. In particular the doctrine embraces all elements of the executive government, from ministers of the Crown downwards<sup>4</sup>. This brings in government departments and their civil servants, members of the armed forces and other public bodies or persons<sup>5</sup>.

The doctrine of Crown immunity means that the Crown can claim to be exempt from any onerous enactment, for example one imposing taxation<sup>6</sup>. Thus premises owned by the Crown were held not to be subject to the Rating Acts<sup>7</sup>, the Rent Acts<sup>8</sup>, or the Town and Country Planning Acts<sup>9</sup>. The doctrine of Crown immunity has an indirect as well as a direct application<sup>10</sup>; but it does not apply to prevent any relevant enactment from applying to the exercise by a private person of rights conferred by the Crown<sup>11</sup>.

Where it is intended that the Crown shall be subject to the provisions of an Act, the usual practice is to insert a provision near the end of the Act saying 'this Act binds the Crown'<sup>12</sup>. It is desirable that Acts should always state explicitly whether or not the Crown is intended to be bound by any, and if so by which, of their provisions<sup>13</sup>.

An intention to bind the Crown may appear by implication<sup>14</sup>. The main test in searching for such an implication is whether the purpose of the Act would be frustrated if the Crown were not bound by it<sup>15</sup>. In the past, attempts were made to classify the cases in which an intention to bind the Crown was to be inferred. It was said, for example, that the implication would arise in the case of any statute made for the public good, the advancement of religion and justice, or to prevent injury and wrong<sup>16</sup>. Generalisations of this nature have received occasional approval in

more modern times<sup>17</sup>, but their validity, particularly in so far as they relate to statutes for the public good, has been more often, and more powerfully, doubted<sup>18</sup>.

It is not proper to infer, by applying the *expressio unius* principle, that because certain provisions of an Act are stated not to bind the Crown, therefore the remainder are intended to do so<sup>19</sup>. Where an Act contains a general saving for the Crown this does not prevent a particular enactment within the Act from binding the Crown where it is clearly intended to do so<sup>20</sup>.

Unless the contrary intention appears, the Crown may take advantage of a statute even though not bound by it<sup>21</sup>. This is a manifestation of the principle of legal policy that law should serve the public interest<sup>22</sup>. Under modern conditions, the Crown is presumed to exist to serve the public interest and therefore for the Crown to take advantage of a statute is deemed to be for the public benefit. Parliament itself has recognised this<sup>23</sup>. Public bodies are, however, expected to behave fairly so, if it takes advantage of an Act, the Crown must accept the disadvantages as well as the advantages arising from that Act<sup>24</sup>.

1 See PARA 1241 ante.

2 '...it is inferred prima facie that the law made by the Crown... is made for subjects and not for the Crown' (*A-G v Donaldson* (1842) 10 M & W 117 at 123 per Alderson B). '...laws are made by rulers for subjects' (*BBC v Johns (Inspector of Taxes)* [1965] Ch 32 at 78, [1964] 1 All ER 923 at 941, CA, per Diplock LJ). The doctrine of Crown immunity is recognised by the Crown Proceedings Act 1947 s 40(2)(f). As to its application to private Acts see *Mersey Docks and Harbour Board v Lucas* (1883) 8 App Cas 891 at 902, HL; *Stewart v Thames Conservators* [1908] 1 KB 893 at 901-902. The effect on the prerogative power of the Crown of a statute empowering it to do, subject to conditions, something which it could previously do by virtue of its prerogative is treated elsewhere in this work: see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 Where an Act of the United Kingdom Parliament extends to an overseas territory the ambit of 'the Crown' in relation to the Act will include the Crown in right of the Government of that territory: *R v Secretary of State for the Home Department, ex p Bhurosah* [1968] 1 QB 266, [1967] 3 All ER 831, CA (Queen of Mauritius); *Mellenger v New Brunswick Development Corp* [1971] 2 All ER 593, [1971] 1 WLR 604, CA (Queen of New Brunswick); *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Indian Assn of Alberta* [1982] QB 892, [1982] 2 All ER 118, CA.

4 *Town Investments Ltd v Department of the Environment* [1978] AC 359, [1977] 1 All ER 813, HL.

5 The question of where the line is to be drawn in relation to the last-named causes frequent difficulty. In *Gilbert v Trinity House Corp* (1886) 17 QBD 795 at 801, Day J suggested the test of whether the person or body in question is an 'emanation of the Crown'. This was rejected by Denning LJ in the leading case of *Tamlin v Hannaford* [1950] 1 KB 18 at 22, [1949] 2 All ER 327 at 328, CA (the test is 'whether it is properly to be regarded as the servant or agent of the Crown' (see *International Rly Co v Niagara Parks Commission* [1941] AC 328 at 342-343, PC)). The Denning test is borne out by modern Acts referring to the doing of acts 'on behalf of' or 'for the purposes of' the Crown (see eg the Sex Discrimination Act 1975 s 85(1), (2), (10)). An Act setting up a new public authority should make clear whether or not it is to be treated as acting on behalf of the Crown: see eg the Town and Country Planning Act 1947 s 3(3) (repealed) (the former Central Land Board); the Fair Trading Act 1973 s 4(1), Sch 3 para 1 (members of the Monopolies and Mergers Commission); the Miscellaneous Financial Provisions Act 1983 s 1(9), Sch 1 para 1 (the Development Commission (later known as the Rural Development Commission)). See also *Maritime Bank of Canada (Liquidators) v Receiver-General of New Brunswick* [1892] AC 437, PC (provincial government); *Bank voor Handel en Scheepvaart NV v Administrator of Hungarian Property* [1954] AC 584, [1954] 1 All ER 969, HL (custodian of enemy property); *BBC v Johns (Inspector of Taxes)* [1965] Ch 32, [1964] 1 All ER 923, CA (broadcasting authority). See further *Cooper v Hawkins* [1904] 2 KB 164; *Chare v Hart* (1918) 88 LJB 833; *Public Works Comrs v Pontypridd Masonic Hall Co Ltd* [1920] 2 KB 233.

6 *Coomber v Berkshire Justices* (1883) 9 App Cas 61 at 66, 76, HL; *A-G v De Keyser's Royal Hotel Ltd* [1920] AC 508 at 526, HL. See also INCOME TAXATION vol 23(2) (Reissue) PARA 1165; and see generally CONSTITUTIONAL LAW AND HUMAN RIGHTS. Tax exemption may also arise under the prerogative: *Coomber v Berkshire Justices* supra at 71; *Madras Electric Supply Corp Ltd v Boarland (Inspector of Taxes)* [1955] AC 667, [1955] 1 All ER 753, HL.

7 *Jones v Mersey Docks and Harbour Board* (1865) 11 HL Cas 443 at 508.

8 *Rudler v Franks* [1947] KB 530; *Wirral Estates Ltd v Shaw* [1932] 2 KB 247, CA.

9 *Minister of Agriculture, Fisheries and Food v Jenkins* [1963] 2 QB 317, [1963] 2 All ER 147, CA. Vehicles driven by Crown servants on Crown business were held not to be subject to the Locomotives Act 1865 (repealed): see *Cooper v Hawkins* [1904] 2 KB 164. The position was changed when the Motor Car Act 1903 s 16 (repealed) applied the 1865 Act to servants of the Crown. Later acts concerned with the regulation of road traffic have continued this subjection.

10 See eg *Re Telephone Apparatus Manufacturers' Application, Re Automatic Telephone and Electric Co Ltd's Application* (1963) LR 3 RP 462, [1963] 2 All ER 302, CA (the Restrictive Trade Practices Act 1956 was held not to apply to an agreement to which the Crown was not a party but which was supplemental to an agreement to which the Crown was a party).

11 See eg *Spook Erection Ltd v Secretary of State for the Environment* [1989] QB 300, [1988] 2 All ER 667, CA. Thus Crown lessees are generally bound by Acts, except in so far as the Crown's reversion may be adversely affected.

12 A corresponding procedure is followed where it is desired that a particular provision, rather than the whole Act, shall be binding on the Crown (eg 'this section binds the Crown'). If a statute binds the Crown it is usual for express provision to be made as to the extent to which it binds the Duchy of Lancaster (which is vested in the Crown: see CONSTITUTIONAL LAW AND HUMAN RIGHTS) and the Duchy of Cornwall (which may from time to time vest in the Crown: see CONSTITUTIONAL LAW AND HUMAN RIGHTS).

13 *Lord Advocate v Dumbarton District Council* [1990] 2 AC 580 at 604, [1990] 1 All ER 1 at 17, HL, per Lord Keith.

14 This is subject to the general rule that where such an implication would contradict any criterion laid down by law for inferring legislative intention (such as the doctrine now under discussion) the basis for the implication must be strong enough to outweigh that criterion: *Thomas v Pritchard* [1903] 1 KB 209 at 212, DC; *Gorton Local Board v Prison Comrs* (1887) reported in [1904] 2 KB 165n at 167n-168n; *A-G v Hancock* [1940] 1 KB 427 at 431, 439, [1940] 1 All ER 32 at 34, 40. As to the interpretative criteria see PARA 1380 et seq post. As to implied enactments see PARA 1234 ante.

15 *Department of Transport v Egoroff* (1986) 18 HLR 326, CA.

16 Bac Abr, Prerogative (E) 5. See *Willion v Berkley* (1561) 1 Plowd 223 at 226 (statutes made for the public good); *Case of Ecclesiastical Persons* (1601) 5 Co Rep 14a at 14b (statutes made to suppress wrong, or to take away fraud, or to prevent the decay of religion); *Magdalen College, Cambridge, Case* (1615) 11 Co Rep 66b at 70b, 72a (statutes which provide necessary and profitable remedy for the maintenance of religion, the advancement of good learning and for the relief of the poor; statutes made to suppress wrong); *R v Archbishop of Armagh* (1722) 1 Stra 516. A further head was suggested in the *Magdalen College, Cambridge, Case* supra at 73a-73b, namely statutes passed to preserve the intentions of founders and donors. See also *Willion v Berkley* supra at 236; *Case of a Fine Levied by the King, Tenant in Tail* (1604) 7 Co Rep 32a. In *Department of Transport v Egoroff* (1986) 18 HLR 326, CA, it was held that the proposition that the Crown is bound by any Act made to suppress a wrong is too wide to be generally applicable.

17 See eg *Re Bonham, ex p Postmaster-General* (1879) 10 ChD 595 at 601, CA, per Jessel MR. See also *R v Wright* (1834) 1 Ad & El 434 at 437 (advancement of justice); *Baron de Bode v R* (1849) 13 QB 364 at 379 (advancement of justice); *A-G of Duchy of Lancaster v Moresby* [1919] WN 69 (suppression of wrong).

18 See eg *The Swift* (1813) 1 Dods 320 at 329; *Thomas v Pritchard* [1903] 1 KB 209 at 212, DC; *A-G v Hancock* [1940] 1 KB 427 at 435, [1940] 1 All ER 32 at 36; *Bombay Province v Bombay Municipal Corp'n* [1947] AC 58 at 62-63, PC; *London County Territorial and Auxiliary Forces Assoc'n v Nichols* [1949] 1 KB 35 at 45, [1948] 2 All ER 432 at 433, CA. See also EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) PARA 247 (the Prescription Act 1832); LIMITATION PERIODS vol 68 (2008) PARA 903.

19 *Bombay Province v Bombay Municipal Corp'n* [1947] AC 58 at 65, PC. See also *Smithett v Blythe* (1830) 1 B & Ad 509 at 519; *Weymouth Corp'n v Nugent* (1865) 6 B & S 22 at 34; *Hornsey UDC v Hennell* [1902] 2 KB 73 at 80; *A-G v Cornwall County Council* (1933) 97 JP 281. Such saving provisions are commonly inserted *ex abundanti cautela* and do not support the inference that the Crown was in other respects intended to be bound by the Act: *Lord Advocate v Dumbarton District Council* [1990] 2 AC 580 at 604, [1990] 1 All ER 1 at 17, HL. As to the *expressio unius* principle see PARA 1494 post.

20 *Stewart v Thames Conservators* [1908] 1 KB 893. See also *Yarmouth Corp'n v Simmons* (1878) 10 ChD 518 at 527-528.

21 *Willion v Berkley* (1561) 1 Plowd 223 at 243; *Case of a Fine Levied by the King, Tenant in Tail* (1604) 7 Co Rep 32a; *A-G v Tomline* (1880) 15 ChD 150, CA; *Cayzer, Irvine & Co v Board of Trade* [1927] 1 KB 269 at 294, CA (affd sub nom *Board of Trade v Cayzer, Irvine & Co* [1927] AC 610, HL); *Town Investments Ltd v Dept of the Environment* [1976] 3 All ER 479, [1976] 1 WLR 1126, CA (revsd on other grounds [1978] AC 359, [1977] 1 All

ER 813, HL). See also Chitty's Prerogatives of the Crown 382; and cf *Cayzer, Irvine & Co v Board of Trade* supra at 294-295, CA (affd [1927] AC 610, HL).

22 See PARA 1450 post.

23 See the Crown Proceedings Act 1947 s 31(1).

24 Any emanation of the Crown is presumed to maintain the highest standards of probity and fair dealing: *Sebel Products Ltd v Customs & Excise Comrs* [1949] Ch 409 at 413. 'When the Crown elects to act under the authority of a statute, it, like any other person, must take the powers it thus uses *cum onere*': *A-G v De Keyser's Royal Hotel Ltd* [1920] AC 508 at 549-550, HL, per Lord Moulton. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS; CROWN PROCEEDINGS AND CROWN PRACTICE.

## UPDATE

### 1321 Application to the Crown

NOTE 5--Fair Trading Act 1973 s 4, Sch 3 repealed: Competition Act 1998 Sch 12 para 1, Sch 14 Pt I. The Monopolies and Mergers Commission is dissolved and its functions are transferred to the Competition Commission; see s 45, Sch 7 and COMPETITION vol 18 (2009) PARAS 9-12.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(1) DUTY TO OBEY LEGISLATION/1322. Nature of a statutory duty.

## 4. OPERATION OF ACTS

### (1) DUTY TO OBEY LEGISLATION

#### 1322. Nature of a statutory duty.

An enactment<sup>1</sup> may impose a duty, known as a statutory duty, on any person<sup>2</sup>. A statutory duty may be either express or implied<sup>3</sup>, either absolute or sub modo<sup>4</sup>, and either prohibitory (where the doing of certain acts is forbidden) or mandatory (where the doing of certain acts is positively required)<sup>5</sup>.

Every person to whom an Act applies is under a legal duty to comply with it<sup>6</sup>. Modern courts do not take a strictly literal view in determining whether a purported compliance satisfies the requirements of the Act<sup>7</sup>, and on the other hand a mere literal compliance without the substance will not suffice<sup>8</sup>. A duty is regarded as discharged where more is done than it requires<sup>9</sup>. In general, hardship is not accepted as an excuse for failing to comply with a statutory duty<sup>10</sup>.

1 For the meaning of 'enactment' see PARA 1232 ante.

2 For the meaning of 'person' see PARA 1382 post. As to the distinction between directory and mandatory statutory requirements see PARA 1238 ante. A statutory duty does not extinguish a corresponding common law duty, unless the contrary intention appears: *Glossop v Heston and Isleworth Local Board* (1879) 12 ChD 102 at 110-111, CA; *Read v Croydon Corp* [1938] 4 All ER 631 at 654; *Barnes v Irwell Valley Water Board* [1939] 1 KB 21, [1938] 2 All ER 650, CA; *East Suffolk Rivers Catchment Board v Kent* [1941] AC 74 at 89, [1940] 4 All ER 527 at 534, HL. Sometimes the Act expressly states that other causes of action are not affected: see eg the Water Resources Act 1991 s 70; and *Cargill v Gotts* [1981] 1 All ER 682, [1981] 1 WLR 441, CA; the Control of Pollution Act 1974 s 105(2); and *Budden v BP Oil Ltd* (1980) 124 Sol Jo 376, CA.

3 For implied provisions generally see PARA 1234 ante. Cf the explanation in PARA 1335 post of the rule in *A-G v Great Eastern Rly Co*(1880) 5 App Cas 473, HL.

4 A duty is absolute where it arises irrespective of the will of the person under the duty. It is a duty sub modo where the subject activates the duty, as by seeking an advantage obtainable only by first discharging the duty. Eg the Rent Act 1977 s 46 states that where rates borne by the landlord are increased, the recoverable rent is to be correspondingly increased by the amount of the increase, but this is not to take effect except in pursuance of a notice of increase served by the landlord on the tenant. This imposes on the landlord a duty sub modo. He is not bound to serve a notice of increase, but must serve one if he wants to obtain reimbursement of the added rates: see *Aristocrat Property Investments Ltd v Harounoff* (1982) 43 P & CR 284, CA. See further LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 895. As to the abolition of domestic rates see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 521. For other examples see *Newton v Cowie* (1827) 5 LJOSCP 159; *Avanzo v Mudie*(1854) 10 Exch 203; *Ryan v Oceanic Steam Navigation Co Ltd*[1914] 3 KB 731, CA.

5 See *R v Horseferry Road Justices, ex p Independent Broadcasting Authority*[1987] QB 54, [1986] 2 All ER 666, DC. As to obligatory powers see PARA 1337 post. As to the duty, in administrative decision making, to observe certain principles see PARAS 1330-1334 post.

6 As to the persons to whom an Act applies see PARA 1319 ante. It is of the nature of legislation that the persons to whom it applies, whether individuals, private corporations, or public officials or bodies, should have a legal duty to obey it. There is no separate machinery for the enforcement of public administrative enactments, even though there may be a developing system of public law: see PARA 1358 post. As to special statutory duties applicable to organs of the executive see PARA 1330 et seq post; and as to sanctions and remedies for breach of statutory duty see PARA 1353 et seq post.

7 As Oliver LJ put it in this connection: 'it is not necessary, in construing a statutory expression, to take leave of one's common sense': *Exxon Corp v Exxon Insurance Consultants International Ltd*[1982] Ch 119 at 144, [1981] 3 All ER 241 at 249, CA. See eg *Banque de l'Indochine et de Suez SA v Euroseas Group Finance Co Ltd*[1981] 3 All ER 198 (duty on company to 'have its name mentioned in legible characters' in letters and notices did not require the registered name to be reproduced in full so as to include the word 'company' without abbreviation). Cf *Singer v Trustee of the Property of Munro (Bankrupts)* [1981] 3 All ER 215, sub nom *Re Munro, ex p Singer v Trustee in Bankruptcy* [1981] 1 WLR 1358 (duty to send a notice to a person not complied with by sending it to his solicitor). As to the commonsense construction rule see PARA 1392 post; and as to the de minimis principle see PARA 1441 post.

8 See eg *Ex p Johnson, re Chapman* (1884) 26 ChD 338, CA (duty imposed by the Bills of Sale Act 1878 s 8 that a bill of sale should set forth the consideration for which it was given by implication required that the consideration be truly set forth).

9 This is in accordance with the maxim *omne majus continet in se minus* (the greater includes the less). The maxim prevails generally in the law, an example of its operation being the rule that tender of a sum larger than the amount of a debt is a good tender provided no counter-demand is made (for example a demand of change). The rule corresponds to the rule that where an act is permitted, anything less is included in the permission: see eg *R v Cousins*[1982] QB 526, [1982] 2 All ER 115, CA (where actual force is permissible, a threat to use force is also permissible). See also Broom, *Legal Maxims* (10th Edn, 1939) p 110-111 (power to lease for 21 years imports power to lease for a shorter period).

10 *R v Botfield* [1982] Crim LR 464; affd (1982) 4 Cr App Rep (S) 132, CA (hardship not a licence to commit crime). Absolute necessity may however be a defence: see PARA 1448 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(1) DUTY TO OBEY LEGISLATION/1323. Exercise of statutory duties from time to time.

### **1323. Exercise of statutory duties from time to time.**

Where an Act<sup>1</sup> passed after 1889 imposes a duty, then, unless the contrary intention appears, it is implied that the duty is to be performed from time to time as occasion requires<sup>2</sup>.

1 For the meaning of 'Act' see PARA 1232 note 2 ante.

2 Interpretation Act 1978 ss 12(1), 22(1), Sch 2 para 3. Cf para 1343 post (statutory power may be exercised from time to time).

## UPDATE

### 1323 Exercise of statutory duties from time to time

TEXT AND NOTES--Where a statute imposes no time limit on the performance of a duty, factors relevant to whether there has been a failure to exercise the duty include (1) the subject matter of the duty and the context in which it falls to be performed; (2) the length of the time taken to perform the duty; (3) the reasons for any delay; and (4) any prejudice that was or might be caused by the delay: *National Car Parks Ltd v Baird (Valuation Officer)* [2004] EWCA Civ 967, [2005] 1 All ER 53.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(1) DUTY TO OBEY LEGISLATION/1324. Ignorance of statute no defence.

### 1324. Ignorance of statute no defence.

Ignorance of the law in question does not excuse the performance of a statutory duty and is therefore no defence to proceedings for a breach of the duty, although it may be a matter of extenuation<sup>1</sup>.

<sup>1</sup> *Carter v McLaren* (1871) LR 2 Sc & Div 120 at 125 per Lord Chelmsford. See also *R v Bailey* (1800) Russ & Ry 1, CCR, where it was held that an offence was committed at sea under a statute which, since it had been passed after the voyage began, could not have been known to the accused at the material time. For a provision negating liability in such circumstances see the Behring Sea Award Act 1894 s 7(2). In relation to offences see also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 17; *Grant v Borg* [1982] 2 All ER 257, [1982] 1 WLR 638, HL. Cf *Secretary of State for Trade and Industry v Hart* [1982] 1 All ER 817, [1982] 1 WLR 481, DC. As to the operation of the doctrine in relation to subordinate legislation see PARA 1511 post; and as to delay in commencement of enactments to give those persons affected an opportunity of becoming aware of them see PARA 1279 ante.

## UPDATE

### 1324 Ignorance of statute no defence

NOTE 1--Behring Sea Award Act 1894 repealed: Marine and Coastal Access Act 2009 s 234(e), Sch 22 Pt 5.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(i) Administration and Enforcement of Legislation/1325. Government departments and executive agencies.

## (2) FUNCTIONS OF THE EXECUTIVE

### (i) Administration and Enforcement of Legislation

### 1325. Government departments and executive agencies.

Unless Parliament otherwise provides, every Act falls within the responsibility of one or more government departments<sup>1</sup>. The government department currently responsible for the administration of an Act is very often the one that dealt with its original enactment<sup>2</sup>. This ensures continuity from the inception of an Act throughout its period of operation; indeed there is continuity as respects a particular subject matter, even though one Act dealing with it succeeds another<sup>3</sup>. In practice, subject to rare ministerial intervention, an Act is administered in accordance with the views and intentions of the departmental officials<sup>4</sup>. In many cases, particularly with regulatory Acts, it will be the department's view of interpretation and not the courts' which will in practice prevail. This is because few questions of interpretation will reach the courts<sup>5</sup>.

Sometimes Parliament sets up a special administrative agency for the purposes of an Act, or of a series of Acts in a particular field<sup>6</sup>, in which case similar principles apply, except that such agencies are more remote from the enactment process<sup>7</sup>.

1 For the meaning of 'Act' see PARA 1206 ante. Except in so far as an Act contains express provision naming its administering agency, constitutional practice requires the Prime Minister to determine (either directly or by delegated authority; as to delegation by ministers to their officials see PARA 1331 post) which minister and therefore which government department is to have the responsibility of administering it. In making such allocations the Prime Minister acts (on behalf of the Crown) in exercise of a prerogative power.

Even where a provision of an Act does name the administering authority, the provision can be amended by Order in Council. The order must be made on government advice, so the choice of responsible minister effectively rests with the Prime Minister even though Parliament has expressed its own intention. Power to make such Orders in Council is conferred by the Ministers of the Crown Act 1975 s 1. It is needed only where the prerogative powers exercisable by the Prime Minister are restricted by some statutory provision (s 5(5) contains an express saving for 'any power exercisable by virtue of the prerogative of the Crown in relation to the functions of Ministers of the Crown'). In recent years the need to rename ministers and departments has been lessened by the practice of referring in Acts to 'the appropriate minister' or (more commonly) to 'the Secretary of State'. In the former case the Act in question goes on to define the appropriate minister as, in effect, the one for the time being nominated for the purpose by the Prime Minister. In the latter case the matter is dealt with by the Interpretation Act 1978 s 5, Sch 1, which define 'Secretary of State' as meaning one of Her Majesty's principal Secretaries of State (see also the Ministers of the Crown Act 1975 s 2). The question of which of the Secretaries of State (for example the Home Secretary or the Defence Secretary) is to be responsible for a function conferred on 'the Secretary of State' by a particular Act can thus be dealt with from time to time administratively. In such cases and also where an Act is silent as to its administration, the question of which department is to be responsible for it is decided by or on behalf of the Prime Minister without statutory restriction. As to the administration and functions of government see further ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 3 et seq.

2 Even where the ministry is later remodelled, the departmental unit responsible for the passing of the Act usually continues to be responsible for administering it, although the unit may be transferred to another department.

3 This is important from the point of view of statutory interpretation, as the department which plans an Act and steers it through Parliament usually has very definite ideas about what it is intended to mean.

4 On a particular topic these often have a long history, undisturbed by the comings and goings of ministers; the treatment of Northern Ireland by successive British Governments may be regarded as one example.

5 But both ministers and officials must promote the policy and objects of the Act: see PARA 1330 post.

6 Eg the rise of the concept of consumer protection led to the passing of the Fair Trading Act 1973, which established the Office of Fair Trading. The Act proceeded, as is usual, not by establishing the Office of Fair Trading as such, but by providing for the appointment of 'an officer to be known as the Director General of Fair Trading [who] may appoint such staff as he may think fit...': see s 1; and COMPETITION vol 18 (2009) PARA 6. The practical effect was the same. The 1973 Act gave the Office of Fair Trading certain functions in relation to the supply of goods to consumers: see s 2; and COMPETITION vol 18 (2009) PARA 7. When in the following year Parliament decided to make new provision to protect consumers in credit and hire transactions it used the administrative machinery ready to hand and enlarged the functions of the Office of Fair Trading to cover this

too: see the Consumer Credit Act 1974 Pt I (ss 1-7) (as amended). The Office has also been given statutory functions in relation to monopolies, mergers and restrictive trade practices: see COMPETITION vol 18 (2009) PARA 6 et seq.

7 A recent development has been to set up 'next steps' executive agencies; for a list of those established as at 7 December 1994 see the Civil Service Year Book (1995) lxxv.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(i) Administration and Enforcement of Legislation/1326. Local authorities.

### **1326. Local authorities.**

Local authorities are frequently selected by Parliament for the administration of Acts in fields such as housing, planning, public health and education; however, they carry out these functions under the supervision of the relevant government department. Uniformity of administration is secured by the issue by the department to local authorities of advisory circulars<sup>1</sup>.

1 See TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 9; and see generally LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq. As to the use of such guidance in statutory interpretation see PARA 1427 post. As to the statutory licensing powers of local authorities see PARA 1327 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(i) Administration and Enforcement of Legislation/1327. Authorising agencies.

### **1327. Authorising agencies.**

Regulatory Acts often set up or make use of authorising agencies, namely agencies (such as licensing authorities) having the statutory function of authorising persons to carry on activities regulated by the Act and of withholding authorisation from persons the agency considers unsuitable. Authorising agencies often have supervisory functions in addition<sup>1</sup>. Local authorities frequently procure for themselves statutory licensing powers under local Acts<sup>2</sup> or may resolve<sup>3</sup> that statutory registration requirements are to be imposed in their areas<sup>4</sup>. Some professional bodies perform statutory supervisory functions<sup>5</sup>.

In relation to statutory procedures of the kind discussed in this paragraph, the courts are rarely troubled with questions of interpretation. It is in practice the authorising agency that sets the standard of conduct within the usually wide bounds of discretion fixed by the enabling Act.

1 The traditional sanction for infringement of an Act is the direct penal sanction, usually imposed by stating that the infringement shall constitute an offence and then going on to set out the penalties. This method requires the prohibited acts or omissions to be specified with particularity in the Act. Where, however, the object of an Act is eg to raise standards in a particular trade, it is not possible to specify the prohibited acts or omissions in detail. Extreme cases of unfair trading may be treated as criminal, but the overall aim can best be achieved by a system of licensing and supervision; so the relevant Act requires traders to seek a licence or other authorisation from an appointed authorising agency. Provision is then made for a licence to be refused or withdrawn if the licensee does not meet the standards required (in accordance with the Act) by the authorising agency: see eg the Consumer Credit Act 1974 ss 21, 147 (licensing functions of this kind conferred on the Office



of Fair Trading); cf the Estate Agents Act 1979 s 3, where the less elaborate method has been adopted of simply authorising the Office of Fair Trading to prohibit unfit persons from practising. Older Acts placed this kind of supervisory function on magistrates, eg in relation to pawnbrokers (see the Pawnbrokers Act 1872 s 40 (repealed)), publicans (see the Licensing Act 1964 Pt I (ss 1-37) (as amended) and bookmakers (see the Betting, Gaming and Lotteries Act 1963 ss 2, 9, Sch 1) (as amended). As to criminal enactments see PARA 1239 ante. As to sanctions and remedies see PARA 1353 et seq post.

2 Eg in relation to such establishments as coffee bars or massage parlours. As to local Acts see PARA 1213 ante.

3 le under the Local Government (Miscellaneous Provisions) Act 1982 s 13.

4 The requirements apply with respect to persons engaged in acupuncture, tattooing, ear-piercing or electrolysis: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 973.

5 Eg the Law Society in relation to the requirement that solicitors shall be in possession of practising certificates: see the Solicitors Act 1974 ss 9-18 (as amended); and LEGAL PROFESSIONS vol 65 (2008) PARA 667 et seq.

## UPDATE

### 1327 Authorising agencies

NOTE 1--As to the Estate Agents Act 1979 s 3 see AGENCY vol 1 (2008) PARA 267 et seq. Betting, Gaming and Lotteries Act 1963 replaced by Gambling Act 2005: see generally LICENSING AND GAMBLING.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(i) Administration and Enforcement of Legislation/1328. Investigating agencies.

### 1328. Investigating agencies.

The enforcement of legislation largely depends on investigating agencies, namely bodies (such as police forces and statutory inspectorates) with the function, whether generally or in relation to a particular Act or class of Acts, of receiving complaints of infringement, investigating possible infringements (usually, but not necessarily, on complaint) and gathering evidence with a view to the institution of criminal proceedings<sup>1</sup> or civil proceedings<sup>2</sup>.

The principal investigating agencies are the police forces. These are in modern times established and regulated by statute, though still based on the ancient office of constable<sup>3</sup>. The concept of the Queen's peace is fundamental to English criminal law<sup>4</sup>, which is now mainly in statutory form<sup>5</sup>. A constable or other functionary is not acting 'in the execution of ' a particular Act where, in relation to the Act, he carries out duties conferred not by the Act but by general powers<sup>6</sup>. A person, such as a police officer, who is in a public place for the purpose of investigating or preventing an offence will not fall within a statutory description intended to designate ordinary members of the public resorting to that place<sup>7</sup>.

1 Persons, from the Attorney General downwards, charged with the function of taking decisions with respect to the prosecution of offences and conducting such prosecutions, are commonly regarded as a branch of the executive. However, in correct constitutional theory they should be regarded as a separate arm of the Crown exercising in a quasi-judicial way what may be called the prosecutive power of the state: see PARA 1345 post.

2 Enforcement of an Act does not only concern the bringing of prosecutions in the criminal courts. Infringements of the Act may call for other forms of procedure, for example the revocation of a licence by an authorising agency (see PARA 1327 ante) or the institution of civil proceedings for an injunction (see PARA 1359 post).

3 Every person appointed to be a member of a police force is required to be attested as a constable and declare that he or she will 'to the best of my power cause the peace to be kept and preserved and prevent all offences against the persons and properties of Her Majesty's subjects... and to the best of my skill and knowledge discharge all the duties [of the office of constable] faithfully according to law': see the Police Act 1964 s 18, Sch 2. Lord Denning has said of the police function: 'The law must be sensibly interpreted so as to give effect to the intentions of Parliament; and the police must see that it is enforced': *R v Metropolitan Police Comr, ex p Blackburn* [1968] 2 QB 118 at 138, [1968] 1 All ER 763 at 770, CA, per Lord Denning MR.

4 In early times prosecutions were known as suits of the peace. Thus in an Act of 1403 (5 Hen 4 c 15) it was declared that the king had agreed to stop the suit of his peace for certain offences.

5 Constables cannot 'prevent all offences' without knowing which acts and omissions constitute offences and which do not. They cannot carry out their duties 'faithfully according to law' without knowledge of what the law requires. Although legal advice and guidance is usually available to them, police officers must when necessary themselves construe enactments and for that purpose must be aware of the principles of statutory interpretation. The same applies to other public officials charged with the duty of investigating offences, such as trading standards officers, tax inspectors and customs officials.

6 *R v Clarke* [1985] AC 1037, [1985] 2 All ER 777, HL (person mistakenly arrested on suspicion of being in unlawful possession of a car who responded untruthfully to a constable who went on to question him about his immigration status held not guilty under the Immigration Act 1971 s 26(1)(c) of making false statements to a person lawfully acting in the execution of the Act).

7 *Cheeseman v DPP* [1992] QB 83, [1991] 3 All ER 54, DC.

## UPDATE

### 1328 Investigating agencies

NOTE 3--1964 Act s 18, Sch 2 now Police Act 1996 s 29, Sch 4.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(i) Administration and Enforcement of Legislation/1329. Executing agencies.

### 1329. Executing agencies.

When a court or tribunal has adjudicated upon a matter arising under statute and issued its order accordingly<sup>1</sup>, the order may need to be put into effect by what may be called an executing agency. Such an agency employs officials, such as court bailiffs and sheriffs' officers, whose duty is to implement, in accordance with the enactments governing their functions, the orders made by the adjudicating authorities<sup>2</sup>. It is the ancient function of the sheriff, as the chief officer of the Crown in every county, to see to the execution of all process issuing from the superior courts<sup>3</sup>. All public officers charged with the duty of executing court judgments and orders are required to observe, and so where necessary construe, the enactments governing that function<sup>4</sup>.

1 As to adjudicating authorities see PARA 1346 et seq post.

2 The concept of the enforcement of laws depends finally on the physical carrying into effect of the orders of the court or other adjudicating authority. Interference with this 'is a contempt to the court and an attachment shall be granted; for it should not be in anyone's power to defeat the rules of this court, or render them

ineffectual': *Butler's Case* (1696) 2 Salk 596. See also *Rantzen v Rothschild* (1865) 13 LT 399; *Davis v Barlow* (1911) 18 WWR 239; *Hubbard v Woodfield* (1913) 57 Sol Jo 729; *Z Ltd v A-Z and AA-LL* [1982] QB 558, [1982] 1 All ER 556, CA; *R v West Yorkshire Coroner, ex p Smith (No 2)* [1985] QB 1096, [1985] 1 All ER 100, DC; *Six Arlington Street Investments Ltd v Persons Unknown* [1987] 1 All ER 474, [1987] 1 WLR 188.

3 For this purpose under-sheriffs and bailiffs are appointed to carry out the physical task of enforcing obedience.

4 For examples of such enactments see the Judgments Act 1838; the Execution Act 1844; the Sheriffs Act 1887; and the Attachment of Earnings Act 1971.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(ii) Duties as to Administrative Decision Making/1330. Exercise of discretion.

## **(ii) Duties as to Administrative Decision Making**

### **1330. Exercise of discretion.**

The duty to administer an Act often places a large discretion on the minister of the Crown concerned<sup>1</sup>, though in practice the discretion will mostly be exercised by officials<sup>2</sup>. A person exercising such a discretion must use it to promote the policy and objects of the Act<sup>3</sup> and must not act so as to frustrate that policy and those objects<sup>4</sup>.

1 As to this duty see PARA 1325 ante.

2 See PARA 1331 post.

3 'Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole... if the minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court': *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 at 1030, [1968] 1 All ER 694 at 699, HL, per Lord Reid. This was named 'the *Padfield* approach' in *R v Secretary of State for the Home Department, ex p Oladehinde* [1991] 1 AC 254 at 280, [1990] 2 All ER 367 at 380, CA, per Lord Donaldson MR (affd [1991] 1 AC 254, [1990] 3 All ER 393, HL).

4 *Freight Transport Asscn Ltd v London Boroughs Transport Committee* [1991] 3 All ER 915 at 922; sub nom *London Boroughs Transport Committee v Freight Transport Asscn Ltd* [1991] 1 WLR 828 at 836, HL, per Lord Templeman, following *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 at 1032-1033, [1968] 1 All ER 694 at 701, HL, per Lord Reid.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(ii) Duties as to Administrative Decision Making/1331. Delegation.

### **1331. Delegation.**

Although statutory functions are often conferred in terms upon 'the Secretary of State'<sup>1</sup> or another minister of the Crown, it is not practically possible for the minister to carry out every such function himself; the minister may delegate to officials, who act on his behalf and in his

name<sup>2</sup>. The principle that statutory functions may be delegated may, however, be displaced by a contrary intention in a particular Act<sup>3</sup>.

1 See PARA 1325 note 1 ante.

2 'In the administration of government in this country the functions which are given to ministers (and constitutionally properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them... The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the department. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an official is, of course, the decision of the minister. The minister is responsible. It is he who must answer before Parliament for anything that his officials have done under his authority and if for an important matter he selected an official of such junior standing that he could not be expected competently to perform the work, the minister would have to answer for that in Parliament.': *Carltona Ltd v Comrs of Works* [1943] 2 All ER 560 at 563, CA, per Lord Greene MR. Lord Donaldson MR said of this dictum: 'Lord Greene MR contemplated that, in devolving authority to take decisions on his behalf, the Secretary of State would only be answerable to Parliament, but it is conceded that, at least in recent times, such a course of action would also be susceptible to judicial review': *R v Secretary of State for the Home Department, ex p Oladehinde* [1991] 1 AC 254 at 281-282, [1990] 2 All ER 367 at 381, CA. As to judicial review see PARA 1358 post. As to the delegation of civil service management functions see the Civil Service (Management Functions) Act 1992 s 1.

3 This was recognised in *R v Secretary of State for the Home Department, ex p Oladehinde* [1991] 1 AC 254, [1990] 3 All ER 393, HL. Lord Griffiths (at 303 and 401) found three instances of this in the Immigration Act 1971; eg s 13(5) refers to a certificate 'given by the Secretary of State (and not by a person acting under his authority)'. In a reference to the linguistic canon of construction *expressum facit cessare tacitum* (see PARA 1493 post), Lord Griffiths added (at 303 and 402): 'Where I find in a statute three explicit limitations on the Secretary of State's power to devolve I should be very slow to read into the statute a further implicit limitation'. See also *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531; sub nom *Doody v Secretary of State for the Home Department* [1993] 3 All ER 92, HL.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(ii) Duties as to Administrative Decision Making/1332. Duty to observe legality.

### **1332. Duty to observe legality.**

The courts have laid down three particular rules that, unless the contrary intention appears, are presumed to be intended to govern the making of an administrative decision under powers conferred by or under any enactment and failure to observe which renders the decision open to judicial review<sup>1</sup>. The first of these three rules is the requirement to observe legality<sup>2</sup>. This means that the enactment under which the decision is taken must first be correctly interpreted by the decision maker, that is construed in accordance with the basic rule of statutory interpretation<sup>3</sup>. Then the decision must comply with the enactment as so interpreted, since otherwise it will be subject to the ultra vires doctrine<sup>4</sup>. The decision maker 'must, so to speak, direct himself properly in law'<sup>5</sup>.

1 The rules are not necessarily comprehensive, but sum up the main grounds of challenge; 'there are certain fundamental assumptions, which without specific restatement in every case, necessarily underlie the remission of power to decide': *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 at 207, [1969] 1 All ER 208 at 244, HL, per Lord Wilberforce. The three rules were laid down specifically by Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410, [1984] 3 All ER 935 at 950, HL. As to judicial review see PARA 1358 post. Judicial review may arise if a discretion is exercised in breach of the approach laid down in *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 1 All ER 694, HL (see PARA 1330 ante) or if a duty is delegated in breach of the principle laid down in *Carltona Ltd v Comrs of Works* [1943] 2 All ER 560, CA (see PARA 1331 ante).

2 For the other two rules see PARAS 1333-1334 post.

3 See PARA 1376 post.

4 See PARA 1341 post.

5 *Associated Provincial Picture Houses Ltd v Wednesbury Corp*n [1948] 1 KB 223 at 229, [1947] 2 All ER 680 at 682, CA, per Lord Greene MR. The decision in *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, [1969] 1 All ER 208, HL, rendered obsolete the distinction between errors of law on the face of the record and other errors of law by extending the doctrine of ultra vires. Thenceforward it was to be taken that Parliament had only conferred the decision-making power on the basis that it was to be exercised on the correct legal basis; a misdirection in law in making the decision therefore rendered the decision ultra vires: *R v Lord President of the Privy Council, ex p Page* [1993] AC 682 at 701; sub nom *Page v Hull University Visitor* [1993] 1 All ER 97 at 107, HL, per Lord Browne-Wilkinson. See also *O' Reilly v Mackman* [1983] 2 AC 237 at 278, [1982] 3 All ER 1124 at 1129, HL, per Lord Diplock. The decision in *Anisminic Ltd v Foreign Compensation Commission* supra does not extend to rulings by courts, so an error of law made by a court otherwise acting within its jurisdiction does not render the court's decision ultra vires: *R v Lord President of the Privy Council, ex p Page* supra at 703 and 108, HL.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(ii) Duties as to Administrative Decision Making/1333. Duty to observe rationality.

### 1333. Duty to observe rationality.

The second of the three particular rules that, unless the contrary intention appears, are presumed to be intended to govern the making of an administrative decision under powers conferred by or under any enactment<sup>1</sup> is the requirement to observe rationality. The decision must fall within the bounds of reason so as not to be 'so unreasonable that no reasonable authority [acting reasonably] could ever have come to it'<sup>2</sup>.

One type of rationality is known as proportionality. Under this a decision may be invalidated if its effect is wholly disproportionate to the object intended to be achieved by the enactment<sup>3</sup>. Proportionality is not a separate head of judicial review but an aspect of reasonableness, acceptance of which as a separate ground for seeking judicial review 'could easily and speedily lead to courts forgetting the supervisory nature of their jurisdiction and substituting their view of what was appropriate for that of the authority whose duty it was to reach that decision'<sup>4</sup>.

A decision is irrational if the decision maker took into account irrelevant considerations. One type of irrelevancy is an indirect motive serving only the ends of the decision maker, in other words bad faith. There are many judicial dicta to the effect that Parliament cannot be taken to intend decisions under its Acts to be arrived at fraudulently, or for private gain or oppression, or for other indirect motive, or otherwise with bad faith<sup>5</sup>.

1 As to the three rules see PARA 1332 ante.

2 *Associated Provincial Picture Houses Ltd v Wednesbury Corp*n [1948] 1 KB 223 at 230, [1947] 2 All ER 680 at 683, CA, per Lord Greene MR. The words in square brackets included in the text were not in Lord Greene's original dictum, but were suggested by Lord Lowry in *Champion v Chief Constable of the Gwent Constabulary* [1990] 1 All ER 116 at 127, [1990] 1 WLR 1 at 16, HL, to acknowledge that a normally reasonable authority may on rare occasions suffer a lapse and act unreasonably. The dictum applies not only to a decision to act which is 'unreasonable' in this special sense, but also to a decision not to act which is similarly unreasonable. Either way, there is what amounts to a failure by the decision maker to carry out the function Parliament entrusted to him. A reviewing court is not to say that it would have decided differently: Parliament has not appointed it to take the decision. Its function is to pronounce whether, in a realistic sense, the decision maker has or has not carried out the statutory function. This has become known as the *Wednesbury* principle and a decision that does not conform to it is said to be '*Wednesbury* unreasonable' or 'unreasonable in the *Wednesbury* sense'. That phraseology, however, 'though we still adhere to it out of usage if not affection, is one that has properly been replaced by the use of the word 'irrational': *R v IRC, ex p Taylor (No 2)* [1989] 3 All ER

353 at 357-358, DC, per Glidewell LJ; on appeal [1990] 2 All ER 409, CA. In order for a court to find that a particular decision or action of an authority was irrational, it has to be 'a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it': see *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410, [1984] 3 All ER 935 at 951, HL, per Lord Diplock. As to the distinction between reviewing and appellate functions see PARA 1358 post.

3 'You must not use a steam hammer to crack a nut, if a nutcracker would do': *R v Goldstein* [1983] 1 All ER 434 at 436, [1983] 1 WLR 151 at 155, HL, per Lord Diplock.

4 *R v Secretary of State for the Home Department, ex p Brind* [1991] 1 AC 696 at 722, [1990] 1 All ER 469 at 480-481, CA, per Lord Donaldson MR (on appeal [1991] 1 AC 696, [1991] 1 All ER 720, HL); followed in *R v General Medical Council, ex p Colman* [1990] 1 All ER 489, CA. Lord Diplock, noting that proportionality is 'recognised in the administrative law of several of our fellow members of the European... Community', contemplated that the principle might be adopted in future as a separate ground of judicial review: *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410, [1984] 3 All ER 935 at 951, HL. 'There can be very little room for judges to operate an independent... proportionality doctrine in the space which is left between the conventional judicial review doctrine [under the three heads of illegality, irrationality and procedural impropriety] and the admittedly forbidden appellate approach': *R v Secretary of State for the Home Department, ex p Brind* supra at 767 and 739, HL, per Lord Lowry. See also *WH Smith Do-It-All Ltd v Peterborough City Council, Payless DIY Ltd v Peterborough City Council* [1991] 1 QB 304, [1991] 4 All ER 193, DC; *Stoke-on-Trent City Council v B & Q plc* [1991] Ch 48, [1991] 4 All ER 221 (subsequent proceedings Case C-169/91 [1993] AC 900, [1993] 2 All ER 297, EC); *Kirklees Metropolitan Borough Council v Wickes Building Supplies Ltd* [1993] AC 227, [1992] 3 All ER 717, HL.

5 See eg *Kruse v Johnson* [1898] 2 QB 91 at 99-100 (reasonableness of byelaw); *Westminster Corpn v London & North Western Rly Co Ltd* [1905] AC 426 at 430; *Board of Education v Rice* [1911] AC 179 at 182, HL; *Local Government Board v Arlidge* [1915] AC 120 at 132-133, HL; *Nakkuda Ali v M F de S Jayaratne* [1951] AC 66 at 77, PC.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(ii) Duties as to Administrative Decision Making/1334. Duty to observe procedural propriety.

### **1334. Duty to observe procedural propriety.**

The third of the three particular rules that, unless the contrary intention appears, are presumed to be intended to govern the making of an administrative decision under powers conferred by or under any enactment<sup>1</sup> is the requirement to observe procedural propriety, also described as the requirement of procedural legitimacy or procedural due process<sup>2</sup>. This rule is contravened where injustice occurs through failure by the decision maker to follow the procedure laid down expressly or impliedly by the relevant enactment<sup>3</sup>.

Procedural propriety is of more practical importance in relation to implied than express requirements<sup>4</sup>. Here it is linked to the concept of fairness or natural justice which in relation to any statutory requirement is implicit in the Act<sup>5</sup>. Procedural propriety in relation to implied principles is limited to cases where the decision maker is acting judicially<sup>6</sup>. One aspect of fairness is that reasonable expectations should be satisfied, which has been called 'the valuable developing doctrine of legitimate expectation'<sup>7</sup>. The requirements of natural justice or fairness are not the same in all cases<sup>8</sup>. An administrative functionary is not therefore required to proceed as if it were a court of justice holding a trial<sup>9</sup>. Moreover rules of natural justice change with the times<sup>10</sup>.

1 As to the three rules see PARA 1332 ante.

2 See *R v Governor of Pentonville Prison, ex p Naghdi* [1990] 1 All ER 257 at 260; sub nom *Re Naghdi* [1990] 1 WLR 317 at 319, DC.

3 Where failure to comply with an express procedural requirement might cause injustice it is likely that the court would hold the requirement to be mandatory rather than directory, so that compliance would be necessary for the decision to be valid. As to the distinction between mandatory and directory enactments see PARA 1238 ante.

4 As to implied requirements in legislation see PARA 1234 ante.

5 *R v Commission for Racial Equality, ex p Hillingdon London Borough Council* [1982] QB 276 at 289, CA, per Lord Denning MR (on appeal [1982] AC 779, HL). In relation to the three heads of illegality, irrationality and procedural impropriety laid down by Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410, [1984] 3 All ER 935 at 951, HL, as the grounds for judicial review, it is 'the third head which embraces breaches of natural justice': *Al-Mehdawi v Secretary of State for the Home Department* [1990] 1 AC 876, [1989] 3 All ER 843, HL, per Lord Bridge.

6 *Al-Mehdawi v Secretary of State for the Home Department* [1990] 1 AC 876 at 898, [1989] 3 All ER 843 at 849, HL; and see *R v IRC, ex p Taylor (No 2)* [1989] 3 All ER 353 at 357-358, DC. As a test for this the following summary by Wade (*Administrative Law* (6th Edn, 1988) pp 518-519) has been approved: 'The mere fact that the power affects rights or interests is what makes it 'judicial' and so subject to the procedures required by natural justice. In other words a power which affects rights must be exercised 'judicially', ie fairly and the fact that the power is administrative does not make it any the less 'judicial' for this purpose': see *R v Army Board of the Defence Council, ex p Anderson* [1992] QB 169 at 185, [1991] 3 All ER 375 at 385, DC.

7 *R v IRC, ex p MFK Underwriting Agents Ltd* [sic] [1990] 1 WLR 1545 at 1569, 62 TC 607 at 643, DC, per Bingham LJ, following *Re Preston* [1985] AC 835; sub nom *Preston v IRC* [1985] 2 All ER 327, HL. See also *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 419, [1984] 3 All ER 935 at 957, HL, per Lord Roskill; *Matrix-Securities Ltd v IRC* [1994] 1 All ER 769; sub nom *R v IRC, ex p Matrix-Securities Ltd* [1994] 1 WLR 334, HL.

8 *Payne v Lord Harris of Greenwich* [1981] 2 All ER 842 at 852, [1981] 1 WLR 754 at 766, CA, per Brightman LJ.

9 It may lack full power to do this, as eg by being unable to administer an oath: *Board of Education v Rice* [1911] AC 179, HL.

10 *Haw Tua Tau v Public Prosecutor* [1982] AC 136 at 154, [1981] 3 All ER 14 at 21, PC, per Lord Diplock. See also *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531 at 560; sub nom *Doody v Secretary of State for the Home Department* [1993] 3 All ER 92 at 106, HL, per Lord Mustill.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(iii) Statutory Powers/1335. Types of statutory power.

### **(iii) Statutory Powers**

#### **1335. Types of statutory power.**

An enactment<sup>1</sup> may confer a power on any person<sup>2</sup>. A statutory power may be express or implied<sup>3</sup>. In particular, the powers conferred by an enactment are taken to include, by implication, all powers which are reasonably necessary for the accomplishment of the object intended to be secured<sup>4</sup>. Those things which are incidental to and may reasonably and properly be done under the main purpose of an enactment, though they may not be literally within it, would not be prohibited<sup>5</sup>; and whatever may fairly be regarded as incidental to, or consequential upon, those things which the legislature has authorised, ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires<sup>6</sup>.

The rule<sup>7</sup> that a statutory power by implication carries with it all incidental powers necessary for its operation is very important. It is for example the basis for the well-known rule that, except where the contrary intention appears, the exercise of a statutory power cannot in itself give rise to civil liability<sup>8</sup>.

An enabling enactment frequently includes so-called 'sweeping-up words' intended to confer expressly residual powers to complete those previously spelt out<sup>9</sup>. The courts tend to regard such words as being strictly limited in scope<sup>10</sup>.

Where powers are conferred by statute there are likely to be implied limitations restricting the express words<sup>11</sup>.

1 For the meaning of 'enactment' see PARA 1232 ante.

2 For the meaning of 'person' see PARA 1382 post. The text and notes *infra* and PARAS 1336-1343 post are primarily concerned with enactments conferring power on an organ of the executive, using that term in the widest sense; but most of what is said therein applies to any statutory power. For the meaning of 'the executive' see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 16. As to statutory powers conferred on courts see PARA 1349 post. As to statutory powers see further ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 16 et seq.

3 For implied provisions generally see PARA 1234 ante.

4 This is known as the rule in *A-G v Great Eastern Rly Co* (1880) 5 App Cas 473, HL, because it was in that case that it was first clearly enunciated. See also *Bac Abr*, Statute (B); *Clarence Rly Co v Great North of England, Clarence and Hartlepool Junction Rly Co* (1845) 13 M & W 706 at 711; *Cookson v Lee* (1853) 23 LJ Ch 473 at 475, CA; *Ecclesiastical Comrs for England v North Eastern Rly Co* (1877) 4 ChD 845 at 856; *Harrison v Southwark and Vauxhall Water Co* [1891] 2 Ch 409 at 414; *London and North Western Rly Co v Evans* [1893] 1 Ch 16 at 28, CA. See also *Re Dudley Corpn* (1881) 8 QBD 86, CA. The principle is stated in the maxim *ubi aliquid conceditur, conceditur etiam id sine quo res ipsa non esse potest* (where anything is granted, that is also granted without which the thing itself is not able to exist). For further instances of the application of the principle generally see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1231 and the cases cited in ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 189 note 2.

5 *A-G v Great Eastern Rly Co* (1880) 5 App Cas 473 at 481, HL.

6 *A-G v Great Eastern Rly Co* (1880) 5 App Cas 473 at 478, HL. See also *McCarthy & Stone (Developments) Ltd v Richmond upon Thames London Borough Council* [1992] 2 AC 48, [1991] 4 All ER 897, HL. As to the doctrine of ultra vires see PARA 1341 post.

7 *See the rule in A-G v Great Eastern Rly Co* (1880) 5 App Cas 473, HL.

8 *See eg Becker v Home Office* [1972] 2 QB 407, [1972] 2 All ER 676, CA. As to the distinction between obligatory and permissive powers see PARA 1337 post.

9 *Eg the Customs and Excise Management Act 1979 s 93(2) (as amended) states that regulations made under the Act may include provisions of certain specified kinds and ends 'and may contain such incidental or supplementary provisions as the Commissioners think necessary or expedient for the protection of the revenue'.*

10 *See eg R v Customs and Excise Comrs, ex p Hedges & Butler Ltd* [1986] 2 All ER 164, DC.

11 So where a statutory corporation such as a local authority is given power to enter into agreements there is an implied restriction limiting the power to what is reasonable having regard to the purpose for which the power is conferred: *see eg Good v Epping Forest District Council* [1994] 2 All ER 156, [1994] 1 WLR 376, CA, relating to the power to enter into agreements conferred on local planning authorities by the Town and Country Planning Act 1971 s 52(1) (repealed and replaced by the Town and Country Planning Act 1990 s 106, now substituted by the Planning and Compensation Act 1991 s 12(1)). As to implied enactments see PARA 1234 ante.

Other matters relating to the exercise of statutory powers are further discussed elsewhere in this work and this title. They include conditional powers (see PARA 1336 post), the enforcement of performance in the case of powers the exercise of which is obligatory (see PARA 1353 et seq post; and as to the rules for determining whether the exercise of powers is obligatory or permissive see PARA 1337 post), the general principles governing the manner in which statutory powers are to be exercised (see PARA 1330 et seq ante; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 20 et seq), the position where damage results from the exercise of, or a failure to exercise, those powers (see PARA 1360 et seq post; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 182 et seq; RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 296), the validity of collateral agreements relating to their exercise (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 33; CORPORATIONS vol 9(2) (2006 Reissue) PARA 1234), the exercise of powers between the passing and the commencement of an Act (see PARA 1280 ante) and the application of the doctrine of estoppel (see PARA 1366 post).



Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(iii) Statutory Powers/1336. Conditional powers.

### **1336. Conditional powers.**

Where a statutory power is conditional, the need to comply with the conditions may be mandatory or merely directory<sup>1</sup>. The fact that the delegate has failed to comply strictly with the conditions laid down in the enabling Act for the making of delegated legislation does not mean that the purported legislation is necessarily void; if that legislation has been acted on for a substantial period and rendering it ineffective would give rise to inconvenience, the court may in its discretion decline either to revoke the legislation or to declare it void<sup>2</sup>.

<sup>1</sup> For the scope of this paragraph see PARA 1335 note 2 ante; and as to the distinction between mandatory and directory enactments see PARA 1238 ante. Where eg an enactment conferring power to make delegated legislation requires the delegate to consult interested persons before exercising the power, this duty is mandatory rather than directory: *R v Secretary of State for Social Services, ex p Asscn of Metropolitan Authorities* [1986] 1 All ER 164, [1986] 1 WLR 1 (insufficient time given for consultation before making regulations under the Social Security and Housing Benefits Act 1982 s 36(1) (repealed)).

<sup>2</sup> *R v Secretary of State for Social Services, ex p Asscn of Metropolitan Authorities* [1986] 1 All ER 164, [1986] 1 WLR 1.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(iii) Statutory Powers/1337. Obligatory and permissive powers.

### **1337. Obligatory and permissive powers.**

The question may arise whether a provision by which powers are conferred is of an obligatory, or merely permissive, character, that is to say whether it is to be taken as requiring, or merely authorising, the exercise of those powers<sup>1</sup>. The answer depends primarily on the language of the particular enactment, Parliament usually being understood to have intended a duty in cases where it has used language of an imperative character, such as 'shall'<sup>2</sup>, and a discretion if the language is on its face merely permissive, such as 'may'<sup>3</sup>. Qualifying words may, however, result in permissive language being construed as mandatory<sup>4</sup>.

The terms in which the provision is framed are not conclusive, for there may be something in the surrounding circumstances to show that authorising words were intended to operate by way of command. If, therefore, the purpose for which a power is conferred is such as to lead to the inference that its exercise was not intended to be at the discretion of the donee, the provision will be construed as obligatory notwithstanding that its language is of a permissive character. This inference may well arise where the purpose is to effectuate legal rights and, in particular, rights of individuals rather than rights vested in the public generally<sup>5</sup>.

A discretionary power may be accompanied by a duty to exercise it, or refrain from exercising it, in certain circumstances<sup>6</sup>. Conversely, mandatory provisions casting duties on public authorities have sometimes been interpreted as permitting the authorities discretion in the manner and extent of the performance of the duties<sup>7</sup>.

<sup>1</sup> For the scope of this paragraph see PARA 1335 note 2 ante. As to mandatory and directory enactments see PARA 1238 ante. As to enforcement in cases where a duty is imposed see PARA 1353 et seq post. As to the

position where damage results from the exercise of, or failure to exercise, statutory powers and the significance in that connection of the distinction between obligatory and permissive powers see further ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 182 et seq.

2 See *Chapman v Milvain* (1850) 5 Exch 61 at 64; *Re Burton and Blinkhorn* [1903] 2 KB 300; *Boynton v Ancholme Comrs for Drainage and Navigation* [1921] 2 KB 213, CA.

3 See *Bell v Crane* (1873) LR 8 QB 481; *Widnes Alkali Co Ltd v Sheffield and Midland Rly Co's Committee* (1877) 37 LT 131; *Re Baker, Nichols v Baker* (1890) 44 ChD 262, CA; *Golden Horseshoe Estates Co Ltd v The Crown* [1911] AC 480, PC. For 'it shall be lawful' see *Julius v Lord Bishop of Oxford* (1880) 5 App Cas 214 at 222, HL, per Lord Cairns LC. See also *R v Eye Corpn* (1821) 4 B & Ald 272 per Abbott CJ; *York and North Midland Rly Co v R* (1853) 1 E & B 858 at 861 per Jervis CJ; *Re Newport Bridge* (1859) 2 E & E 377 at 380 per Crompton J.

4 *Re Shuter (No 2)* [1960] 1 QB 142, [1959] 3 All ER 481, DC, where 'may, unless sufficient cause is shown to the contrary' was to be construed as 'shall, unless sufficient cause is shown to the contrary'. See also *Annisson v District Auditor for Metropolitan Borough of St Pancras* [1962] 1 QB 489, [1961] 3 All ER 914, DC.

5 *Julius v Lord Bishop of Oxford* (1880) 5 App Cas 214 at 244, HL, per Lord Blackburn. See also *Sheffield Corpn v Luxford* [1929] 2 KB 180 at 184, DC. In *Julius v Lord Bishop of Oxford* supra the test was put at greater length by Lord Cairns LC at 225: 'Where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised and the court will require it to be exercised'. See also *R v Worcestershire Justices, ex p Lower Avon Navigation Co Ltd* [1939] WN 176, DC.

6 *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 1 All ER 694, HL, where a provision giving discretion to refer complaints to a committee of investigation was held to confer a duty to refer all relevant and substantial complaints to the committee in the absence of good reason to the contrary. See also *Car Owners' Mutual Insurance Co Ltd v Treasurer of the Commonwealth of Australia* [1970] AC 527, [1969] 2 Lloyd's Rep 614, PC, where the Treasurer was held to be obliged to certify that the company had satisfied the requirements for recovery of its deposited funds; *A-G v Antigua Times Ltd* [1976] AC 16, [1975] 3 All ER 81, PC, where a provision giving a minister a discretion to waive a deposit if satisfied with the sufficiency of other security was held to confer a duty to waive the deposit if he was so satisfied; *Congreve v Home Office* [1976] QB 629, [1976] 1 All ER 697, CA (duty not to exercise power to revoke television licences without good cause); *Bristol District Council v Clark* [1975] 3 All ER 976, [1975] 1 WLR 1443, CA. However, cf *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610, [1970] 3 All ER 165, HL, where the relevant Act did not indicate the policy which the minister was to follow in giving grants, so it was held to confer an unqualified discretion. As to the wider principle, which these cases illustrate, that a discretion conferred by an Act must be exercised on proper legal grounds and in accordance with the policy of the Act see PARA 1330 et seq ante. As to power to make commencement orders see PARA 1279 ante.

7 *Engineers' and Managers' Assn v Advisory, Conciliation and Arbitration Service (No 2)* [1980] 1 All ER 896, [1980] 1 WLR 302, HL, where it was held that the Advisory, Conciliation and Arbitration Service had a duty to conduct an inquiry but a discretion as to the manner in which the inquiry was to be held, including a discretion to defer its inquiries and consultations. See also *R v Bristol Corpn, ex p Hendy* [1974] 1 All ER 1047, [1974] 1 WLR 498, CA; *Haydon v Kent County Council* [1978] QB 343, [1978] 2 All ER 97, CA.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(iii) Statutory Powers/1338. Legislative powers.

### 1338. Legislative powers.

Where an Act<sup>1</sup> passed after 1889 confers power to make rules, regulations or byelaws, then, unless the contrary intention appears, it implies a power, exercisable in the same manner and subject to the same conditions or limitations, to revoke, amend or re-enact any instrument made under the power<sup>2</sup>.

Where an Act passed after 1978 confers power to make Orders in Council, orders or other subordinate legislation to be made by statutory instrument, then, unless the contrary intention appears<sup>3</sup>, it implies a power, exercisable in the same manner and subject to the same conditions or limitations, to revoke, amend or re-enact any instrument made under the power<sup>4</sup>.

1 For the scope of this paragraph see PARA 1335 note 2 ante. For the meaning of 'Act' see PARA 1232 note 2 ante.

2 See the Interpretation Act 1978 ss 14(a), 22(1), Sch 2 para 3.

3 See eg the exclusion in the New Towns Act 1981 s 77(3A) (added by the New Towns and Urban Development Corporations Act 1985 s 8(2), Sch 3 para 12).

4 See the Interpretation Act 1978 ss 14(b), 22(1), 26.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(iii) Statutory Powers/1339. Powers of office holders.

### **1339. Powers of office holders.**

Where an Act<sup>1</sup> passed after 1889 confers a power or imposes a duty on the holder of an office as such, then, unless the contrary intention appears, it is implied that the power may be exercised, or the duty is to be performed, by the holder for the time being of the office<sup>2</sup>.

1 For the scope of this paragraph see PARA 1335 note 2 ante. For the meaning of 'Act' see PARA 1232 note 2 ante.

2 Interpretation Act 1978 ss 12(2), 22(1), Sch 2 para 3. See *Wiseman v Canterbury Bye-Products Co Ltd* [1983] 2 AC 685, PC.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(iii) Statutory Powers/1340. Assignment and delegation of powers.

### **1340. Assignment and delegation of powers.**

Powers conferred by statute cannot be assigned without statutory authority<sup>1</sup>, and whether they can be delegated depends on the construction of the statute<sup>2</sup>.

1 *Great Northern Ry Co v Eastern Counties Ry Co* (1851) 9 Hare 306 at 312; *Richmond Waterworks Co and Southwark and Vauxhall Waterworks Co v Richmond (Surrey) Vestry* (1876) 3 ChD 82 at 98; *Re Woking UDC (Basingstoke Canal) Act 1911* [1914] 1 Ch 300 at 313, CA. For the scope of this paragraph see PARA 1335 note 2 ante.

2 See ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 31. Where emergency regulations authorised the governor of a protectorate to make an order directing that a person should be detained if he was satisfied that it was necessary for the purpose of maintaining public order, a provision entitling him to delegate his power to make a detention order entitled him also to delegate the duty of satisfying himself that the order was necessary, since the duty and power were interwoven: *Mungoni v A-G of Northern Rhodesia* [1960] AC 336, [1960] 1 All ER 446, PC. As to the delegation of statutory powers relating to the appointment or management of civil servants see the Civil Service (Management Functions) Act 1992 s 2.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(iii) Statutory Powers/1341. Doctrine of ultra vires.

### 1341. Doctrine of ultra vires.

A power to do something extends only to that thing<sup>1</sup>; so a purported exercise of the power that extends to a different thing is to that extent not an exercise of the power at all and in so far as it purports to depend on the power, it is void as being ultra vires<sup>2</sup>. An administrative order or other act which is ultra vires, but not defective on its face, is voidable rather than void. It therefore subsists and has force unless and until quashed or otherwise set aside by a court possessing the necessary jurisdiction<sup>3</sup>. In practice the doctrine of ultra vires mainly arises in connection with the making of delegated legislation and is dealt with more fully in that connection<sup>4</sup>.

1 This is subject to the rule in *A-G v Great Eastern Rly Co* (1880) 5 App Cas 473, HL (see PARA 1335 ante) or any other implied expansion of the power. As to implied enactments see PARA 1234 ante.

2 'The power exercised must be the power conferred': RFV Heuston, *Essays in Constitutional Law* (2nd Edn, 1964), p 171. See eg *A v HM Treasury* [1979] 2 All ER 586, [1979] 1 WLR 1056 (direction by the Treasury under the Exchange Control Act 1947 s 34(1), Sch 5 para 1(1) (repealed) requiring a person who had been arrested and charged with an offence under that Act to furnish the Treasury with information needed to detect evasion of the Act held ultra vires as requiring the person to incriminate himself, the power by implication not extending to persons already arrested and charged). For the scope of this paragraph see PARA 1335 note 2 ante. As to the doctrine of ultra vires see further ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 20; JUDICIAL REVIEW vol 61 (2010) PARA 610 et seq.

3 So, on a charge under the Town and Country Planning Act 1990 s 179(2) (as substituted) of the offence of breach of an enforcement notice, it was no defence that the notice was alleged to be ultra vires; since it had not been quashed on judicial review it remained extant and operative, with a presumption of validity: *R v Wicks* (1995) Times, 19 April, CA. Cf para 1358 text and note 22 post. As to the presumption of validity of delegated legislation see PARA 1520 post.

4 See PARA 1521 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(iii) Statutory Powers/1342. Compensation for exercise of powers.

### 1342. Compensation for exercise of powers.

Where an enactment authorises interference with private rights, a provision for compensation is usually included. The absence of such a provision in relation to a particular form of interference indicates that it was not intended to be authorised<sup>1</sup>.

1 As to the presumption against doubtful penalisation see PARA 1456 post. See also ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 187.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(2) FUNCTIONS OF THE EXECUTIVE/(iii) Statutory Powers/1343. Exercise of powers from time to time.

### **1343. Exercise of powers from time to time.**

Where an Act<sup>1</sup> passed after 1889 confers a power, then, unless the contrary intention appears, it is implied that the power may be exercised from time to time as occasion requires<sup>2</sup>.

<sup>1</sup> For the scope of this paragraph see PARA 1335 note 2 ante. For the meaning of 'Act' see PARA 1232 note 2 ante.

<sup>2</sup> Interpretation Act 1978 ss 12(1), 22(1), Sch 2 para 3. The purpose of this provision, which was formerly contained in the Interpretation Act 1889 s 32(1) (repealed), is to overcome the inconvenience formerly caused by the doctrine that a statutory power was exhausted by its first exercise unless (as eg in *Battersea Borough Council v County of London Electric Supply Co Ltd* [1913] 2 Ch 248, CA) a contrary intention could be discovered. For an example of the operation of the doctrine see the Union with Ireland Act 1800 art 1, by which the Crown was empowered to determine by proclamation the royal style and titles to be assumed after the passing of the Act, and, the power having been exercised on 1 January 1801, the granting by the Royal Titles Act 1876 (repealed) of a new power of amendment for the purpose of enabling the transfer to the Crown of the Government of India to be recognised. The availability of statutory powers is sometimes confined to a specified period. This is so particularly in the case of powers to acquire land compulsorily and the principles then applicable are discussed in COMPULSORY ACQUISITION OF LAND. See *Re Wilson* [1985] AC 750, [1985] 2 All ER 97, HL. As to temporary Acts see PARA 1216 ante. See also, for the application of this rule, *R v Ealing London Borough Council, ex p McBain* [1986] 1 All ER 13, [1985] 1 WLR 1351, CA. For cases apparently decided in ignorance of the rule see *R v Clerkenwell Stipendiary Magistrate, ex p Mays* [1975] 1 All ER 65, [1975] 1 WLR 52, DC (overruled in *Re Wilson* supra); *R v Pinfold* [1988] QB 462, [1988] 2 All ER 217, CA.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(3) FUNCTIONS OF THE ATTORNEY GENERAL/1344. Dual role of Attorney General.

## **(3) FUNCTIONS OF THE ATTORNEY GENERAL**

### **1344. Dual role of Attorney General.**

The Attorney General is an officer of the Crown with two separate constitutional roles, a governmental role and a role as the guardian of the public interest<sup>1</sup>. In his governmental role he acts as a member of the government, advising on the law (including the drafting of legislation). In his role as the guardian of the public interest he acts independently in a quasi-judicial capacity, representing the community at large<sup>2</sup>. It is essential from a constitutional viewpoint for a holder of the office always to realise and remember in which role he is acting in a particular matter and to keep the two roles scrupulously apart<sup>3</sup>.

<sup>1</sup> *Brookes v DPP* [1994] 1 AC 568 at 579, [1994] 2 All ER 231 at 238, PC, per Lord Woolf.

<sup>2</sup> As to the latter role see further PARAS 1345, 1359 post.

<sup>3</sup> The Solicitor General is in a similar position, acting as the deputy of the Attorney General: see CONSTITUTIONAL LAW AND HUMAN RIGHTS. Decisions of the Attorney General and of the Solicitor General are not amenable to judicial review: see *R v Solicitor General, ex p Taylor* (1995) Times, 14 August, DC. As to judicial review see PARA 1358 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(3) FUNCTIONS OF THE ATTORNEY GENERAL/1345. Attorney General and prosecutions.

### 1345. Attorney General and prosecutions.

In his role as the guardian of the public interest<sup>1</sup> the Attorney General has the constitutional function of exercising on behalf of the Crown what may be called the prosecutive power of the state, which has developed over the centuries as a distinct and independent arm of the royal prerogative<sup>2</sup>. This constitutional position is subject to the provisions of the Prosecution of Offences Act 1985 placing prosecution duties on the Crown Prosecution Service in place of the police<sup>3</sup>. In recognition of the Attorney General's common law constitutional position as wielder of the prosecutive power, the Director of Public Prosecutions is required by the Act to carry out his functions 'under the superintendence of the Attorney General'<sup>4</sup>. Parliament has however required the Director of Public Prosecutions to issue a Code for Crown Prosecutors, 'giving guidance on general principles to be applied by them'<sup>5</sup>. Despite the constitutionally independent position of the Attorney General, the courts are increasingly assuming regulatory functions in relation to prosecutions. Judges sometimes criticise prosecutors for selecting for charge an offence considered too minor in view of the facts<sup>6</sup>. Decisions to prosecute or not to prosecute (including decisions regarding cautions) and decisions to continue or discontinue a prosecution are theoretically subject to judicial review<sup>7</sup>, but this jurisdiction is unlikely to be exercised in practice except on a very restricted basis<sup>8</sup>. Where a person has been promised immunity from prosecution but is thereafter prosecuted in the same matter, this may be a ground for judicial review as constituting an abuse of process<sup>9</sup>.

1 See PARA 1344 ante.

2 The constitutional principle is that all offences are against the peace of the Queen, whose officer the Attorney General is.

3 As well as being the main investigating agencies (see PARA 1328 ante), police forces were until the commencement of the Prosecution of Offences Act 1985 the main prosecuting agencies, though in England and Wales they have since 1879 been supplemented by the Director of Public Prosecutions and his staff. The latter office was set up by the Prosecution of Offences Act 1879 (repealed and replaced by the Prosecution of Offences Act 1979; see now the Prosecution of Offences Act 1985 ss 2, 3 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1066). As to the Crown Prosecution Service see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1079 et seq.

4 Prosecution of Offences Act 1985 s 3(1).

5 Ibid s 10(1). The current code is *The Code For Crown Prosecutors* (Crown Prosecution Service, 1994).

6 See, eg, *R v Bodmin Justices, ex p McEwen* [1947] KB 321, [1947] 1 All ER 109, DC. According to the courts, prosecuting agencies 'have the duty to exercise great care in selecting the proper charges to prefer': *R v Canterbury and St Augustine's Justices, ex p Klisiak* [1982] QB 398 at 415, [1981] 2 All ER 129 at 137, CA, per Lord Lane CJ.

7 As to judicial review see PARA 1358 post.

8 See *R v Chief Constable of the Kent County Constabulary, ex p L (a minor)*, *R v DPP, ex p B (a minor)* [1993] 1 All ER 756, 93 Cr App 416, DC; *R v IRC, ex p Mead* [1993] 1 All ER 772, DC. Cf, however para 1344 note 3 ante.

9 *R v Croydon Justices, ex p Dean* [1993] QB 769, [1993] 3 All ER 129, DC. Cf *R v Horseferry Road Magistrates' Court, ex p Bennett* [1994] 1 AC 42, [1993] 3 All ER 138, HL. The latter case establishes 'the Bennett principle' which 'enlarges the concept of abuse of process to embrace serious abuses of power where it is only by the abuse of power that legal process has become possible': see *R v Secretary of State for the Home Department, ex p Schmidt* [1995] 1 AC 339 at 357, [1994] 2 All ER 784 at 801, DC, per Sedley J.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(i) Validity, Interpretation, etc/1346. General functions of the court.

## **(4) FUNCTIONS OF THE COURT**

### **(i) Validity, Interpretation, etc**

#### **1346. General functions of the court.**

A court is a tribunal or body charged with exercising the judicial power of the state<sup>1</sup>. In relation to legislation it has the function of (1) ensuring that relevant legislation is formally valid<sup>2</sup>; (2) authoritatively construing an enactment, that is determining its legal meaning<sup>3</sup>; and (3) aiding its implementation and enforcement<sup>4</sup>.

The court is not entitled to question the power of Parliament to make any statute<sup>5</sup>, or the propriety or wisdom of making it<sup>6</sup>; and may not base its application of an enactment on its view of what Parliament ought to have done rather than what it did do<sup>7</sup>.

1 See the Contempt of Court Act 1981 s 19. See further Bennion, *Statutory Interpretation* (2nd Edn, 1992) ss 19-23.

2 See PARA 1202 ante.

3 See PARA 1369 et seq post.

4 See PARA 1347 post.

5 As to the legislative supremacy of Parliament see PARA 1201 ante.

6 *The Prince's Case* (1606) 8 Co Rep 1a at 18a; *Harrison v Burwell* (1670) 2 Vent 9 at 10; *Stead v Carey* (1845) 1 CB 496 at 516; *Salkeld v Johnson* (1848) 2 Exch 256 at 273; *Earl of Shrewsbury v Scott* (1859) 6 CBNS 1; *Lee v Bude and Torrington Junction Rly Co* (1871) LR 6 CP 576 at 580, 582; *Vacher & Sons Ltd v London Society of Compositors* [1913] AC 107 at 113, HL; *Duport Steels Ltd v Sirs* [1980] 1 All ER 529, [1980] 1 WLR 142, HL.

7 *R v Mansel Jones* (1889) 23 QBD 29 at 39, DC. Cf *Abel v Lee* (1871) LR 6 CP 365 at 371. See also *R v Poor Law Comrs, Re Holborn Union* (1838) 6 Ad & El 56 at 69; *Allkins v Jupe* (1877) 2 CPD 375 at 385; *Conway v Wade* [1909] AC 506 at 510, HL; *Dallimore v Williams and Jesson* (1914) 30 TLR 432 at 433, CA; *Maunsell v Olins* [1975] AC 373 at 384, [1975] 1 All ER 16 at 19, HL, per Viscount Dilhorne; *Stock v Frank Jones (Tipton) Ltd* [1978] 1 All ER 948, [1978] 1 WLR 231, HL; *Wentworth Securities Ltd v Jones* [1980] AC 74 at 105-107; sub nom *Jones v Wrotham Park Settled Estates* [1979] 1 All ER 286 at 289-290, HL; *Royal College of Nursing of the United Kingdom v Department of Health and Social Security* [1981] AC 800, [1981] 1 All ER 545, HL, obiter, per Lord Wilberforce and Lord Edmund-Davies; *Shah v Barnet London Borough Council* [1983] 2 AC 309 at 343, 347, [1983] 1 All ER 226 at 234, 238, HL, per Lord Scarman.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(i) Validity, Interpretation, etc/1347. Duty to implement legislation.

#### **1347. Duty to implement legislation.**

The courts' duty to implement legislation means that they must aid its operation and enforcement in their judgments<sup>1</sup>. This requires that, if it is possible, the words of an Act must be construed so as to give them a sensible meaning<sup>2</sup>, inconsistencies within the Act must be

reconciled<sup>3</sup>, and it must, if possible, be construed in the sense which makes it operative and does not defeat the manifest intentions of the legislature<sup>4</sup>. Nothing short of impossibility so to construe it should allow a court to declare a statute unworkable<sup>5</sup>. It is not permissible to treat an enactment as void for uncertainty<sup>6</sup> and only if the provision can be given no sensible or ascertainable meaning should it be regarded as meaningless<sup>7</sup>.

1 The court must observe the maxim *ut res magis valeat quam pereat* (ie construing an enactment in such a way as to implement, rather than defeat, the legislative purpose): see *The Beta* (1865) 3 Moo PCCNS 23 at 25; *Whitney v IRC* [1926] AC 37, HL.

2 *Curtis v Stovin* (1889) 22 QBD 513 at 517, CA; *Hankey v Clavering* [1942] 2 KB 326 at 330, [1942] 2 All ER 311 at 314, CA; *Hawtrej v Beaufront Ltd* [1946] KB 280, [1946] 1 All ER 296.

3 An Act is taken to give the courts such jurisdiction and powers as are necessary for its implementation, even though not expressly conferred: see, eg, *Buckley v Law Society (No 2)* [1984] 3 All ER 313, [1984] 1 WLR 1101, Sir Robert Megarry V-C. As to the presumption that the court is required to discountenance evasion of an Act see PARA 1476 post.

4 *Luke v IRC* [1963] AC 557 at 577, [1963] 1 All ER 655 at 664, HL, per Lord Reid; *No 20 Cannon Street Ltd v Singer and Friedlander Ltd* [1974] Ch 229 at 236, [1974] 2 All ER 577 at 584 per Megarry J; *Dockers Labour Club and Institute Ltd v Race Relations Board* [1976] AC 285 at 299, [1974] 3 All ER 592 at 600, HL, per Lord Simon of Glaisdale; *A-G for Northern Ireland's Reference (No 1 of 1975)* [1977] AC 105, [1976] 2 All ER 937, HL; *W Devis & Sons Ltd v Atkins* [1977] AC 931 at 959, [1977] 3 All ER 40 at 53, HL, per Lord Simon of Glaisdale.

5 *Murray v IRC* [1918] AC 541 at 553, HL; *Pye v Minister for Lands for New South Wales* [1954] 3 All ER 514 at 524, [1954] 1 WLR 1410 at 1423, PC; *Bromilow and Edwards Ltd v IRC* [1970] 1 All ER 174 at 178, [1970] 1 WLR 128 at 130, CA, per Russell LJ; *Kent County Council v Kingsway Investments (Kent) Ltd* [1971] AC 72 at 101, [1970] 1 All ER 70 at 85, HL, per Lord Morris of Borth-y-Gest. Thus where a statute has some meaning, even if it is obscure, or several meanings, even though there is little to choose between them, the court must decide what meaning the statute is to bear, rather than reject it as a nullity: *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636 at 676, [1960] 3 All ER 503 at 516, HL. As to the presumption against unworkability see PARA 1478 post.

6 *Manchester Ship Canal Co v Manchester Racecourse Co* [1900] 2 Ch 352 at 360-361 (affd [1901] 2 Ch 37, CA); *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636 at 662, [1960] 3 All ER 503 at 507, HL, per Lord Cohen and at 676 and 516-517 per Lord Denning.

7 *R v King and King* (1826) 2 C & P 412; *Green v Wood* (1845) 7 QB 178; *Salmon v Duncombe* (1886) 11 App Cas 627, PC; *McEldowney v Forde* [1971] AC 632, [1969] 2 All ER 1039, HL.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(i) Validity, Interpretation, etc/1348. Powers of the court.

### 1348. Powers of the court.

The powers conferred by various enactments on courts are one among several forms of statutory power<sup>1</sup>. A statutory power conferred on the court may be express or implied<sup>2</sup>. The question may arise whether a provision by which powers were conferred on a court is of an obligatory, or merely permissive, character, that is to say whether it is to be taken as requiring, or merely authorising, the exercise of those powers<sup>3</sup>. Thus, provisions to the effect that the courts 'may', in specified circumstances, make orders as to costs<sup>4</sup> and orders for possession<sup>5</sup>, order a stay of execution<sup>6</sup>, appoint arbitrators<sup>7</sup>, deal with summary offences as if indictable<sup>8</sup>, and make a declaration that a person surcharged has acted reasonably<sup>9</sup>, have all been held to impose a duty to exercise the power in question whenever the appropriate circumstances obtain, as were provisions that the courts might grant a commission of bankruptcy<sup>10</sup> and enforce by distress or imprisonment payments formerly due under affiliation orders<sup>11</sup>. Similarly, provisions making it 'lawful' for the courts to order execution to issue<sup>12</sup> or money to be paid



out<sup>13</sup>, to issue warrants for possession<sup>14</sup> and to appoint constables for the protection of particular interests<sup>15</sup> have been held to confer no discretion and the same view has been taken of a provision 'empowering' commissioners to confirm certain agreements<sup>16</sup> and of one giving 'power and authority' to make a rate for the purpose of reimbursing expenses incurred by constables in the execution of statutory duties<sup>17</sup>. It has also been said that the inference will arise wherever power is conferred to do a judicial act<sup>18</sup>, but the authorities do not appear to bear out either this proposition<sup>19</sup> or the still wider one that all powers conferred for the public good must be construed as obligatory<sup>20</sup>.

1 The general provisions in PARAS 1335-1343 ante relating to statutory powers conferred on organs of the executive apply with the necessary adaptations to statutory powers conferred on courts.

2 Cf para 1335 ante. For instances of the application of the principle that a statutory power may be implied to Acts conferring judicial functions see *Oath before Justices Case* (1611) 12 Co Rep 130; *Bane v Methuen* (1824) 2 Bing 63; *Smeeton v Collier* (1847) 1 Exch 457; *Ex p Martin* (1879) 4 QBD 212 at 215 per Pollock CB (affd sub nom *Martin v Bannister* (1879) 4 QBD 491, CA); *Bodden v Metropolitan Police Comr* [1990] 2 QB 397 at 405, [1989] 3 All ER 833 at 837, CA, per Beldam LJ.

3 Cf para 1337 ante.

4 *Macdougall v Paterson* (1851) 11 CB 755, followed in *Crake v Powell* (1852) 2 E & B 210.

5 *Sheffield Corpn v Luxford* [1929] 2 KB 180, DC.

6 *Marson v Lund* (1849) 13 QB 664.

7 *Re Eyre and Leicester Corpn* [1892] 1 QB 136, CA; but see *Re Bjornstad and Ouse Shipping Co Ltd* [1924] 2 KB 673, CA.

8 *R v Mitchell, ex p Livesey* [1913] 1 KB 561.

9 *Annisson v District Auditor for Metropolitan Borough of St Pancras* [1962] 1 QB 489, [1961] 3 All ER 914, DC.

10 *Alderman Backwell's Case* (1683) 1 Vern 152.

11 *Davies v Evans* (1882) 9 QBD 238 at 239-241, DC, per Huddleston B (the provision was regarded as permissive by the other judge, Grove J).

12 *Morisse v Royal British Bank* (1856) 1 CBNS 67.

13 *Re Neath and Brecon Rly Co* (1874) 9 Ch App 263.

14 *Shelley v LCC* [1949] AC 56 at 67, [1948] 2 All ER 898 at 901, HL

15 *R v Worcestershire Justices, ex p Lower Avon Navigation Co* [1939] WN 176, DC.

16 *R v Tithe Comrs* (1849) 14 QB 459.

17 *R v Barlow* (1693) 2 Salk 609.

18 *Macdougall v Paterson* (1851) 11 CB 755 at 773; *R v Kensington Income Tax Comrs* [1913] 3 KB 870 at 899.

19 See eg *Re Bridgman* (1860) 1 Drew & Sm 164, where a provision making it lawful for the Lord Chancellor to remove bankrupt trustees was held to confer a discretion; *Julius v Lord Bishop of Oxford* (1880) 5 App Cas 214, HL, where a provision making it lawful for bishops to institute inquiries into allegations of ecclesiastical offences was similarly construed; *Re Baker, Nichols v Baker* (1890) 44 ChD 262, CA, where a provision that Chancery judges may transfer to the court exercising jurisdiction in bankruptcy the administration of insolvent estates was held not to impose an obligation to transfer.

20 As to the proposition that all powers conferred for the public good must be construed as obligatory see *R v Barlow* (1693) 2 Salk 609; *R v Tithe Comrs* (1849) 14 QB 459 at 474; and for criticisms of it see *Julius v Lord Bishop of Oxford* (1880) 5 App Cas 214 at 230, 244, HL. See also *Forbes v Lee Conservancy Board* (1879) 4 Ex D 116 at 120-121 per Pollock B.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(i) Validity, Interpretation, etc/1349. Ouster of jurisdiction.

### 1349. Ouster of jurisdiction.

The courts are reluctant to see their jurisdiction ousted and tend to construe strictly any enactment that purports or is alleged to deny or restrict that jurisdiction. It has been said that the proper tribunals for the determination of legal disputes in this country are the courts and they are the only tribunals which, by training and experience and assisted by properly-qualified advocates, are fitted for the task<sup>1</sup>.

Where it is the intention of an Act, as disclosed by its scope and by its wording, that a special remedy provided by it should be the only one for enforcing a particular obligation created by the Act, the result may be to exclude or restrict the inherent or ordinary jurisdiction of the courts<sup>2</sup> and to send a person wishing to enforce the obligation to an administrative body<sup>3</sup>, to arbitration<sup>4</sup>, or to some particular court or tribunal only<sup>5</sup>.

1 *Lee v Showman's Guild of Great Britain* [1952] 2 QB 329 at 354, [1952] 1 All ER 1175 at 1188, CA, per Romer LJ. See also *R v Moreley* (1760) 2 Burr 1040 at 1042; *Shipman v Henbest* (1790) 4 Term Rep 109; *R v London Corpn* (1829) 9 B & C 1 at 27; *Balfour v Malcolm* (1842) 8 Cl & Fin 485 at 500, HL; *Albon v Pyke* (1842) 4 Man & G 421 at 424; *Smith v Brown* (1871) LR 6 QB 729 at 733; *Oram v Brearey* (1877) 2 Ex D 346 at 348; *Seward v Vera Cruz, The Vera Cruz* (1884) 10 App Cas 59, HL; *Payne v Hogg* [1900] 2 QB 43 at 53, CA; *Morris and Bastert Ltd v Loughborough Corpn* [1908] 1 KB 205, CA; *A-G v Boden* [1912] 1 KB 539 at 561; *Re Vexatious Actions Act 1896, Re Boaler* [1915] 1 KB 21 at 36, CA; *Goldsack v Shore* [1950] 1 KB 708, [1950] 1 All ER 276, CA; *Francis v Yiewsley and West Drayton UDC* [1957] 2 QB 136 at 148, [1957] 1 All ER 825 at 831; *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1960] AC 260, [1959] 3 All ER 1, HL; *Customs and Excise Comrs v Cure and Deeley Ltd* [1962] 1 QB 340, [1961] 3 All ER 641; *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 at 170, [1969] 1 All ER 208 at 213, HL, per Lord Reid; *Pountney v Griffiths* [1976] AC 314 at 331, 334, [1975] 2 All ER 881 at 884, 886-887, HL, per Lord Edmund-Davies; *Mutual Shipping Corpn v Bayshore Shipping Co of Monrovia, The Montan* [1985] 1 All ER 520 at 525, [1985] 1 WLR 625 at 631, CA, per Donaldson MR. See also *Brockwell v Bullock* (1889) 22 QBD 567, CA (county court jurisdiction); and COURTS vol 10 (Reissue) PARA 319. See further *Smith v East Elloe RDC* [1956] AC 736, [1956] 1 All ER 855, HL; *R v Secretary of State for the Environment, ex p Ostler* [1977] QB 122, [1976] 3 All ER 90, CA; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 612. The court's jurisdiction was found to have been expressly excluded in *Vandervell Trustees Ltd v White* [1971] AC 912, [1970] 3 All ER 16, HL; and by necessary implication in *A v Liverpool City Council* [1982] AC 363, [1981] 2 All ER 385, HL. See also *R v Greenwich London Borough Council, ex p Patel* (1985) 84 LGR 241, 129 Sol Jo 654, CA, where it was held that the Town and Country Planning Act 1971 s 243 (repealed; see now the Town and Country Planning Act 1990 s 285 (as amended)) was so worded as effectively to oust the jurisdiction of the court. In *R v Miall* [1992] QB 836, [1992] 3 All ER 153, CA, it was held that the Criminal Justice Act 1988 s 41(3) (magistrates' court's decision to exercise powers under s 41(1) (prospectively amended by the Criminal Justice and Public Order Act 1994 s 44(3), Sch 4 para 66, as from a day to be appointed) not to be subject to appeal or liable to be questioned in any court) did not prevent quashing of a committal order which went beyond the powers conferred by the Criminal Justice Act 1988 s 41(1). Section 41(3) is what in *R v Cornwall County Council, ex p Huntington* [1992] 3 All ER 566, DC, Mann LJ (at 575) called an *Anisminic* clause (after *Anisminic Ltd v Foreign Compensation Commission* supra). He contrasted it with what may be called an *Ostler* clause (after *R v Secretary of State for the Environment, ex p Ostler* supra, which does not preclude jurisdiction to review a decision in all cases, but only where a review procedure specifically laid down for that type of decision has not been followed).

2 *Barraclough v Brown* [1897] AC 615; *Stannard v St Giles, Camberwell, Vestry* (1882) 20 ChD 190 at 196, CA; *Grand Junction Waterworks Co v Hampton UDC* [1898] 2 Ch 331; *Merrick v Liverpool Corpn* [1910] 2 Ch 449 at 461. Where an Act entrusts decisions on the welfare of children to local authorities and provides statutory rights of appeal, the courts may hold that their wardship jurisdiction has been correspondingly restricted: *Re M (an Infant)* [1961] Ch 328, [1961] 1 All ER 788, CA; *Re B (an Infant)* [1962] Ch 201, [1961] 3 All ER 276, CA; *A v Liverpool City Council* [1982] AC 363, [1981] 2 All ER 385, HL. The court may assume jurisdiction notwithstanding provision for an exclusive statutory remedy where the machinery for pursuing that remedy has not yet been established: *Thorne RDC v Bunting* [1972] Ch 470, [1972] 1 All ER 439, where no commons commissioners had been appointed under the Commons Registration Act 1965.

3 *Pasmore v Oswaldtwistle UDC* [1898] AC 387, HL, where the only remedy open to persons aggrieved was held to be an appeal to the Local Government Board (followed in *Earl of Harrington v Derby Corp* [1905] 1 Ch 205); *Johnston and Toronto Type Foundry Co v Toronto Consumers' Gas Co* [1898] AC 447, PC (audit by municipal authorities); *Wilkinson v Barking Corp* [1948] 1 KB 721 at 724, [1948] 1 All ER 564 at 567, CA; *Morris v Minister of Pensions* [1948] 1 All ER 748; *Department of Health and Social Security v Walker Dean Walker Ltd* [1970] 2 QB 74, [1970] 1 All ER 757 (Secretary of State); *Southwark London Borough Council v Williams* [1971] Ch 734, [1971] 2 All ER 175, CA (Secretary of State).

4 *Crisp v Bunbury* (1832) 8 Bing 394; *Joseph Crosfield & Sons Ltd v Manchester Ship Canal Co* [1905] AC 421, HL; *Norwich Corp v Norwich Electric Tramways Co Ltd* [1906] 2 KB 119, CA; *A-G of the Duchy of Lancaster v Simcock* [1966] Ch 1, [1965] 2 All ER 32.

5 *Marshall v Nicholls* (1852) 18 QB 882; *Blackburn Corp v Parkinson* (1858) 1 E & E 71; *Hanley and Bucknall Coal Co v North Staffordshire Rly Co* (1891) 64 LT 656; *Horner v Franklin* [1905] 1 KB 479, CA; *Stuckey v Hooke* [1906] 2 KB 20, CA; *East Midlands Gas Board v Doncaster Corp* [1953] 1 All ER 54, [1953] 1 WLR 54; *Argosam Finance Co Ltd v Oxby (Inspector of Taxes)* [1965] Ch 390 at 423, [1964] 3 All ER 561 at 564-565, CA, per Lord Denning MR and at 425 and 566 per Diplock LJ (income tax commissioners); *Harrison v Croydon London Borough Council* [1968] Ch 479, [1967] 2 All ER 589 (Lands Tribunal); *Re Al-Fin Corp's Patent* [1970] Ch 160, [1969] 3 All ER 396 (Comptroller-General of Patents); *Road Transport Industry Training Board v J Wyatt Jnr (Haulage) Ltd* [1973] QB 469, [1972] 3 All ER 913 (Industrial Tribunal).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(i) Validity, Interpretation, etc/1350. Doctrine of precedent.

### 1350. Doctrine of precedent.

The ordinary rules as to the binding force of precedent<sup>1</sup>, and as to the powers of superior courts to revise or overrule the decisions of inferior courts<sup>2</sup>, apply to cases of interpretation of statutes as to other cases. It is, however, the actual decision of a court which is binding and not the words used by the judges in giving the decision<sup>3</sup>, and the courts must guard against the danger of construing the expositions of a statute in previous cases, instead of the words of the statute itself<sup>4</sup>.

When a particular interpretation of an enactment on which certain supposed rights are founded has been acted upon for a long period<sup>5</sup>, a court will be cautious in holding that the supposed rights do not exist<sup>6</sup>; but will do so if it is clear that the previous interpretation was erroneous<sup>7</sup>. Similarly, where in other cases a construction has been uniformly adopted in a course of decisions<sup>8</sup>, and rights to property or under contracts have been founded on that construction<sup>9</sup>, a court of review will not lightly overrule that course of decisions and adopt a different construction<sup>10</sup>, nor will it lightly overrule an established construction affecting the liberty of the subject<sup>11</sup> unless the meaning placed on the words is clearly wrong<sup>12</sup>. In interpreting a new Act, however, it is not right to follow a line of authority as to the meaning of a word in previous Acts with a different philosophy so as to 'clutter the new Act with ancient baggage', particularly when this would not leave the meaning of that word as something which the ordinary person would understand it to be<sup>13</sup>.

1 See CIVIL PROCEDURE vol 11 (2009) PARA 91 et seq.

2 The function of interpretation exercised by the courts extends to correcting errors of interpretation made by inferior courts: *Home v Earl Camden* (1795) 2 Hy Bl 533 at 536, HL. A superior court is not bound to follow an error of an inferior court merely because there has been an apparent adoption of the error by a subsequent Act of Parliament: *R v Bow Road Justices (Domestic Proceedings Court)*, ex p *Adedigba* [1968] 2 QB 572, [1968] 2 All ER 89, CA; *Farrell v Alexander* [1977] AC 59 at 74-75, [1976] 2 All ER 721 at 727, HL, per Lord Wilberforce; *Dyson Holdings Ltd v Fox* [1976] QB 503, [1975] 3 All ER 1030, CA. Subject to the power of the House of Lords not to follow its previous decisions (for a consideration of when this power should be exercised in relation to a point of statutory construction see *Jones v Secretary of State for Social Services* [1972] AC 944, [1972] 1 All ER

145, HL), the law as laid down in a decision of a court of supreme authority can only be amended by legislation: *IRC v Harrison* (1874) LR 7 HL 1; *Close v Steel Company of Wales Ltd* [1962] AC 367 at 393, [1961] 2 All ER 953 at 964, HL, per Lord Morton of Henryton. As to the reluctance of the courts to upset an established interpretation see the text and notes 5-12 infra; and CIVIL PROCEDURE vol 11 (2009) PARA 99.

3 *Paisner v Goodrich* [1955] 2 QB 353 at 358, [1955] 2 All ER 330 at 332, CA, per Denning LJ; revsd without affecting this judgment sub nom *Goodrich v Paisner* [1957] AC 65, [1956] 2 All ER 176, HL.

4 *Wright v Walford* [1955] 1 QB 363 at 374-375, [1955] 1 All ER 207 at 210, CA. See also *Ogden Industries Pty Ltd v Lucas* [1970] AC 113 at 127, [1969] 1 All ER 121 at 126, PC, per Lord Upjohn; *Wells v Derwent Plastics Ltd* [1978] ICR 424, EAT.

5 *Clyde Navigation Trustees v Laird & Sons* (1883) 8 App Cas 658 at 670, 673, HL ('one or two centuries'); *Assheton Smith v Owen* [1906] 1 Ch 179 at 207, 212-213, CA; *Lansbury v Riley* [1914] 3 KB 229, DC; *R v Casement* [1917] 1 KB 98 at 139, CCA.

6 *Clyde Navigation Trustees v Laird & Sons* (1883) 8 App Cas 658 at 670, HL; *Assheton Smith v Owen* [1906] 1 Ch 179 at 213, CA; *Sadler v Whiteman* [1910] 1 KB 868 at 892, CA. See also *Dunbar Magistrates v Duchess of Roxburghe* (1835) 3 Cl & Fin 335 at 354; *Re Holt's Settlement*, *Wilson v Holt* [1969] 1 Ch 100 at 115, [1968] 1 All ER 470 at 476 per Megarry J.

7 *R v Hogg* (1787) 1 Term Rep 721 at 728; *Dunbar Magistrates v Duchess of Roxburghe* (1835) 3 Cl & Fin 335 at 354; *Gorham v Bishop of Exeter* (1850) 15 QB 52 at 69; *Governor & Co of Bank of Ireland v Trustees of Evans' Charities in Ireland* (1855) 5 HL Cas 389 at 405; *Re Wright, ex p Willey* (1883) 23 ChD 118, CA; *Northam Bridge Co v R* (1886) 55 LT 759; *Hamilton v Baker*, *The Sara* (1889) 14 App Cas 209 at 221, HL; *Emmerson v Maddison* [1906] AC 569, PC; *West Ham Union v Edmonton Union* [1908] AC 1 at 4, HL; *Lord Advocate v Walker Trustees* [1912] AC 95, HL.

8 The considerations stated in the text do not apply where there are conflicting decisions, or isolated decisions not establishing a course of authority (*Earl of Waterford's Claim* (1832) 6 Cl & Fin 133 at 172, HL; *Jones v Mersey Docks and Harbour Board* (1865) 11 HL Cas 443; *Reid v Reid* (1886) 31 ChD 402 at 410, CA), or where the overturning of an established construction will not affect the way people conduct themselves or have far-reaching consequences (*Governors of the Campbell College, Belfast v Valuation Comr for Northern Ireland* [1964] 2 All ER 705, [1964] 1 WLR 912, HL; *R v Bow Road Justices (Domestic Proceedings Court)*, *ex p Adedigba* [1968] 2 QB 572, [1968] 2 All ER 89, CA), or, it seems, where a word is intended to be given its natural meaning and its meaning changes from time to time (*Re St Mary's, Luton* [1968] P 47, [1966] 3 All ER 638, Court of Arches; *Dyson Holdings v Fox* [1976] QB 503, [1975] 3 All ER 1030, CA; but see *Watson v Lucas* [1980] 3 All ER 647, [1980] 1 WLR 1493, CA). See also CIVIL PROCEDURE vol 11 (2009) PARA 99.

9 *Goldsmiths' Co v Wyatt* [1907] 1 KB 95, CA; *Pate v Pate* [1915] AC 1100 at 1108, PC. Cf *Farrell v Alexander* [1977] AC 59 at 74, [1976] 2 All ER 721 at 727, HL, per Lord Wilberforce.

10 *Morgan v Crawshay* (1871) LR 5 HL 304 at 319-320; *Cox v Leigh* (1874) LR 9 QB 333 at 339; *Re Wright, ex p Willey* (1883) 23 ChD 118 at 127, CA; *Phillips v Rees* (1889) 24 QBD 17 at 21, CA; *Lancashire and Yorkshire Rly Co v Bury Corpn* (1889) 14 App Cas 417 at 422, HL; *Tancred, Arrol & Co v Steel Co of Scotland* (1890) 15 App Cas 125 at 141, HL; *LCC v Churchwardens etc of Erith Parish and Dartford Union Assessment Committee*, *West Ham Parish Churchwardens etc v LCC*, *St George's Union Assessment Committee v LCC* [1893] AC 562 at 569, HL; *Morgan v Fear* [1907] AC 425 at 429, HL; *Cohen v Bayley-Worthington* [1908] AC 97 at 99, HL; *Hanau v Ehrlich* [1912] AC 39, HL; *Associated Newspapers Ltd v City of London Corpn* [1916] 2 AC 429, HL; *Bourne v Keane* [1919] AC 815 at 874, HL; *Re Warden and Hotchkiss Ltd* [1945] Ch 270, [1945] 1 All ER 507, CA; *R v Barnsley Licensing Justices, ex p Barnsley and District Licensed Victuallers' Assocn* [1960] 2 QB 167 at 185, [1960] 2 All ER 703 at 713, CA.

11 *Thompson v Nixon* [1966] 1 QB 103 at 110, [1965] 2 All ER 741 at 744, DC, per Sachs J.

12 *Lancashire and Yorkshire Rly Co v Bury Corpn* (1889) 14 App Cas 417 at 419, HL; *Bourne v Keane* [1919] AC 815 at 874, HL; *Robinson Bros (Brewers) Ltd v Durham County Assessment Committee (Area No 7)* [1938] AC 321, [1938] 2 All ER 79, HL; *Public Trustee v IRC* [1960] AC 398 at 415-416 and 421, 423, [1960] 1 All ER 1 at 9 and 12, 14, HL.

13 See *Firstpost Homes Ltd v Johnson* (1995) Times, 14 August, CA.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(i) Validity, Interpretation, etc/1351. Reference to practice, opinions of jurists etc.

### **1351. Reference to practice, opinions of jurists etc.**

In the application and interpretation of legislation, the opinion expressed in legal textbooks and similar works by authors of established reputation<sup>1</sup> and the established practice of conveyancers<sup>2</sup> may be considered not as authorities on the construction but as evidence of the construction which has been generally accepted in the legal profession<sup>3</sup>.

The consideration of practice as a key to the interpretation of an Act must be distinguished from usage as a proof of some other non-statutory right<sup>4</sup>. Casual admissions of liability under an Act cannot be called in aid<sup>5</sup>.

1 Eg Sir Edward Coke: see *Strother v Hutchinson* (1837) 4 Bing NC 83 at 89; *Newcastle Corpn v A-G* (1845) 12 Cl & Fin 402 at 419, HL; *Re Gorham v Bishop of Exeter* (1850) 5 Exch 630; *Willmott v London Road Car Co Ltd* [1910] 2 Ch 525, CA. As to other authors see *R v Ritson* (1869) LR 1 CCR 200 at 203; *Re Warner's Settled Estates, Warner to Steel* (1881) 17 ChD 711 at 713; *Bastin v Davies* [1950] 2 KB 579 at 581, [1950] 1 All ER 1095 at 1096, DC; *Cehave NV v Bremer Handelsgesellschaft MbH, The Hansa Nord* [1976] QB 44 at 59, [1975] 3 All ER 739 at 746, CA, per Lord Denning MR and at 72 and 757 per Roskill LJ.

2 *Basset v Basset* (1744) 3 Atk 203 at 208; *Re Ford and Hill* (1879) 10 ChD 365 at 370, CA; *Re Ryder and Steadman's Contract* [1927] 2 Ch 62 at 84, CA. This principle applies where an Act adopts the wording of a common form provision in use before the enactment of the Act: *Pilkington v IRC* [1964] AC 612 at 634, [1962] 3 All ER 622 at 627, HL, per Viscount Radcliffe. In some cases commercial practice may also provide a guide to the meaning of a word to which Parliament has attached no specific meaning: *United Dominions Trust Ltd v Kirkwood* [1966] 2 QB 431, [1966] 1 All ER 968, CA.

3 *Basset v Basset* (1744) 3 Atk 203 at 208; *Alexander v Kirkpatrick* (1874) LR 2 Sc & Div 397 at 400, HL; *Henty v Wrey* (1882) 21 ChD 332 at 348, CA; *Bromley v Tryon* [1952] AC 265 at 274-275, [1951] 2 All ER 1058 at 1065, HL.

4 *Clyde Navigation Trustees v Laird* (1883) 8 App Cas 658 at 670, HL; *Van Diemen's Land Co v Table Cape Marine Board* [1906] AC 92 at 98, PC.

5 *Northam Bridge Co v R* (1886) 55 LT 759.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(i) Validity, Interpretation, etc/1352. Judicial notice.

### **1352. Judicial notice.**

Under the doctrine of judicial notice, a court will in certain circumstances accept the existence of a law or fact, or the meaning of a term, without the necessity of proof<sup>1</sup>. A judge is taken to know the general law prevailing within the area of his jurisdiction<sup>2</sup>, that is the common law (including principles of equity), established customs prevailing within the jurisdiction of the court in a particular geographical area<sup>3</sup> or among a particular class of people (such as the law merchant), Acts of Parliament required by statute to be judicially noticed<sup>4</sup> and the law of the European Community<sup>5</sup>, but not subordinate legislation<sup>6</sup>. The court will not require evidence of notorious facts, but will accept them as existing without need of proof<sup>7</sup>. Judicial notice is taken of the meaning of words, other than technical terms not belonging to the system of law prevailing within the court's jurisdiction<sup>8</sup>. Judges will, however, take notice of non-legal expertise if it is well known<sup>9</sup>.

1 The principle is expressed in the maxim *lex non requirit verificari quod apparet curiae* (the law does not require verification of what is apparent to the court): 9 Co Rep 54.

2 *The Prince's Case* (1606) 8 Co Rep 1a at 13b. As Coke put it: *judex est lex loquens* (a judge is the law speaking): *Calvin's Case* (1608) 7 Co Rep 1a at 4a. This presumption extends to all aspects of the legal system: *Dorset Yacht Co Ltd v Home Office* [1970] AC 1004 at 1070, [1970] 2 All ER 294 at 334, HL. The judge is nevertheless entitled to refresh his memory of the law by whatever means appear suitable. It is accepted that judges may have a mistaken knowledge of the law: see *R v Kent* [1983] 3 All ER 1 at 3, [1983] 1 WLR 794 at 796, CA.

3 le such as gavelkind and borough English.

4 le all Acts passed before 1851 which so provide and all Acts passed after 1850 which do not otherwise provide: Interpretation Act 1978 ss 3, 22(1), Sch 2 para 2. In practice only personal Acts otherwise provide. As to personal Acts see PARA 1214 ante.

5 European Communities Act 1972 s 3(2) (amended by the European Communities (Amendment) Act 1986 s 2; extended to decisions and expressions of opinion by the EFTA Court by the European Economic Area Act 1993 s 4(a)).

6 For the meaning of 'subordinate legislation' see PARA 1232 ante. Since the Interpretation Act 1978 s 23(1), which applies most of the provisions of that Act to subordinate legislation (see PARA 1245 ante) excepts s 3 (judicial notice of Acts) then by implication, in accordance with the maxim *expressio unius est exclusio alterius* (see PARA 1494 post), the Act intends that judicial notice shall not be taken of such legislation. This was the view of the Divisional Court in *Re Evans (Terrence)* (1993) (CO-866-93, unreported on this point). See also *R v Governor of Brixton Prison, ex p Servini* [1914] 1 KB 77; *Snell v Unity Finance Co Ltd* [1964] 2 QB 203, [1963] 3 All ER 50, CA; *Palastanga v Solman* (1962) 106 Sol Jo 176, DC. See further PARA 1512 post.

7 These are the facts of nature and other matters generally known to well-informed people: *Escoigne Properties Ltd v IRC* [1958] AC 549 at 566, HL. They include such things as human propensities (*Gold Star Publications Ltd v DPP* [1981] 2 All ER 257 at 259, [1981] 1 WLR 732 at 735, HL, per Lord Wilberforce); the current state of the housing market (*Brooks v Brooks* [1995] Fam 70, [1994] 4 All ER 1065, CA, per Waite LJ; affd [1995] 3 All ER 257, [1995] 3 WLR 141, HL); that the former community charge legislation aroused strong feelings (*R v Leicester City Justices, ex p Barrow* [1991] 2 QB 260 at 282-283, [1991] 3 All ER 935 at 940-941, CA, per Lord Donaldson MR); that drugs are a great danger today (*Yeandel v Fisher* [1966] 1 QB 440 at 446, [1965] 3 All ER 158 at 161, DC); and that at sea flags of convenience facilitate the use of cheap labour (*NWL Ltd v Woods, NWL Ltd v Nelson* [1979] 3 All ER 614, [1979] ICR 867, CA). See also *RCA Corp v Pollard* [1982] 1 WLR 979 at 992 per Vinelott J (on appeal [1983] Ch 135, [1982] 3 All ER 771, CA) (fact that Elvis Presley lived and for the most part performed in the United States of America).

8 'Judges are philologists of the highest order': *Ex p Davis* (1857) 5 WR 522 at 523 per Pollock CB. 'Is not the judge bound to know the meaning of all words in the English language?': *Hills v London Gaslight Co* (1857) 27 LJ Ex 60 at 63 per Martin B. As to the admission of evidence concerning the meaning of words see PARA 1370 post; and as to reference to dictionaries etc see PARA 1371 post.

9 Thus Lord Keith said of the contractor's principle that it was a 'notoriously unreliable' method of valuation: *Western Heritable Investment Co Ltd v Husband* [1983] 2 AC 849 at 857, [1983] 3 All ER 65 at 71, HL.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(ii) Sanctions and Remedies for Breach of Statutory Duty/1353. Nature of sanctions and remedies.

## **(ii) Sanctions and Remedies for Breach of Statutory Duty**

### **1353. Nature of sanctions and remedies.**

In response to the actual or anticipated breach of a statutory duty<sup>1</sup> sanctions and remedies are usually available<sup>2</sup>. In relation to a particular breach, sanctions and remedies may be laid down by the Act creating the duty<sup>3</sup> or may arise under the general law, or may derive partly from the

Act and partly from the general law. Provisions of the general law apply in any case to supplement a particular sanction or remedy, whether or not it derives from the Act creating the duty<sup>4</sup>.

1 As to the nature of a statutory duty see PARA 1322 ante.

2 A sanction is a penalty or other punishment exigible by the state, while a remedy is a means, available to the state or others, of preventing the breach or obtaining redress for it.

3 The Act may be intended to be a code complete in itself: *Lamplugh v Norton* (1889) 22 QBD 452 at 459, CA; *R v Otto Monsted Ltd* [1906] 2 KB 456 at 463, DC.

4 For an example relating to criminal sanctions see PARA 1355 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(ii) Sanctions and Remedies for Breach of Statutory Duty/1354. Contempt of statute.

### 1354. Contempt of statute.

The common law offence of contempt of statute arises in respect of a breach of statutory duty<sup>1</sup> and renders an offender liable on conviction on indictment to imprisonment for such term as the court thinks fit, or a fine of any amount, or both<sup>2</sup>. It has now been laid down by the Divisional Court that contempt of statute is a mere rule of construction, and that the offence arises only where the enactment imposing the duty is ancient and no other remedy, such as judicial review, is available<sup>3</sup>. Whether this emasculation of a long-standing common law doctrine would be upheld if the point came before a higher court is uncertain<sup>4</sup>.

1 As to the nature of a statutory duty see PARA 1322 ante.

2 The offence was more usually known as statutory misdemeanour until the abolition of the distinction between felony and misdemeanour effected by the Criminal Law Act 1967 s 1(1). Its ambit is difficult to define since the decision in *R v Horseferry Road Justices, ex p Independent Broadcasting Authority* [1987] QB 54, [1986] 2 All ER 666, DC. Before that decision it could be said that it is taken to be the legislator's intention, unless the contrary intention appears (particularly from the fact that criminal sanctions are expressly laid down by the Act creating the statutory duty in question), that breach of that duty shall constitute contempt of statute. This is because it is the essence of a legal command that there shall be a sanction for disobedience to it; since otherwise it is a mere entreaty or 'pious aspiration': *Cutler v Wandsworth Stadium Ltd* [1949] AC 398 at 407, [1949] 1 All ER 544 at 548, HL, per Viscount Simonds. The term 'contempt of statute' derives from Coke ('whosoever an act of parliament doth generally prohibit any thing... the party grieved shall not have his action only for his private relieve, but the offender shall be punished at the kings suit for the contempt of his law': 2 Co Inst 163; see also 2 Hawk PC ch 25 s 4; *Thomas Hollingworth's Case* (1620) Cro Jac 577; *R v Jones* (1735) 2 Stra 1145; *R v Davis* (1754) Say 163; *R v Wright* (1758) 1 Burr 543; *R v Robinson* (1759) 2 Burr 800; *R v Boyall* (1759) 2 Burr 832; *R v Smith* (1780) 2 Doug KB 441; *R v Harris* (1791) 4 Term Rep 202; *R v Gregory* (1833) 5 B & Ad 555; *R v Price* (1840) 11 Ad & El 727; *R v Buchanan* (1846) 8 QB 883; *Fox v R* (1859) 29 LJMC 54; *R v Walker* (1875) LR 10 QB 355; *R v Hall* [1891] 1 QB 747; *R v Tyler* [1891] 2 QB 588 at 592; *A-G v London and North Western Ry* [1900] 1 QB 78, CA; *The Torni* [1932] P 78 at 90, CA; *Rathbone v Bundock* [1962] 2 QB 260, [1962] 2 All ER 257, DC; *R v Lennox-Wright* [1973] Crim LR 529; *Metropolitan Police Comr v Curran* [1976] 1 All ER 162 at 172, [1976] 1 WLR 87 at 99, HL.

Stephen J said: 'Every one commits a misdemeanour who wilfully disobeys any statute of the realm by doing any act which it forbids, or by omitting to do any act which it requires to be done, *and which concerns the public or any part of the public*, unless it appears from the statute that it was the intention of the legislature to provide some other penalty for such disobedience' (*Digest of the Criminal Law* (9th Edn, 1950) art 152 p 120, emphasis added). Where the duty is imposed by a public Act, the italicised passage says no more than that a public Act concerns the public, which is self-evident. As to the distinction between public and private Acts see PARA 1208 et seq ante. In *R v Richards* (1800) 8 TR 634 disobedience was held not to be indictable where the

statutory duty was for the benefit only of those entitled to use a particular private road; see also *R v Pawlyn* (1664) 1 Sid 208.

3 *R v Horseferry Road Justices, ex p Independent Broadcasting Authority* [1987] QB 54, [1986] 2 All ER 666, DC, where the court held that in modern Acts the practice is to create an offence expressly if it is the intention to do so; and that the sanction of contempt of statute is more likely to be intended to apply if the statutory duty is to observe a prohibition rather than to carry out a mandatory act. Earlier the Law Commission, in a report not implemented by Parliament, had recognised the existence of the offence and recommended that it be abolished on the doubtful ground that whenever Parliament intends breach of statutory duty to be punished it says so expressly: *Report on Conspiracy and Criminal Law Reform* (1975-76) Law Com no 76 para 6.5. This overlooked the fact that the practice has been to draft Acts in the light of the offence of contempt of statute, and if it did not exist drafters might have felt it necessary to insert specific penal provisions more frequently.

4 The courts are not authorised to abolish a common law rule of their own motion, particularly where Parliament may be assumed to have relied on it in enacting legislation. The lack of authority is even more obvious where it is known that Parliament had the opportunity to abolish or amend the rule but declined to take it: see *Shaw v DPP* [1962] AC 220 at 275, [1961] 2 All ER 446 at 457, HL, per Lord Reid ('Where Parliament fears to tread, it is not for the courts to rush in'). See also *C v DPP* [1994] 3 All ER 190, [1994] 3 WLR 888, DC, where the court purported to abolish a common law rule in contravention of these principles, holding that because of the changed conditions of society the common law rule that a child between the age of ten and 14 is presumed to be *doli incapax* (incapable of committing an offence) unless the prosecution prove that he knew the act was seriously wrong no longer existed; *revsd* [1995] 2 All ER 43, [1995] 2 WLR 383, HL.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(ii) Sanctions and Remedies for Breach of Statutory Duty/1355. Specific criminal sanctions.

### 1355. Specific criminal sanctions.

Where an Act creating a statutory duty<sup>1</sup> includes a provision expressly imposing a criminal sanction for breach of the duty, the general law governing criminal liability and procedure applies where, and to the extent that, it is needed to supplement that provision<sup>2</sup>. The language of an enactment will not be construed as creating a criminal offence unless this is its clear result<sup>3</sup>.

Where civil proceedings, for example on a construction summons, have already been begun before the institution of criminal proceedings in an inferior court involving substantially the same issues, the parties being in reality the same, the court can grant an injunction restraining the continuation of the criminal proceedings, on the ground that it would be vexatious to continue them, until the civil proceedings have been decided<sup>4</sup>.

1 As to the nature of a statutory duty see PARA 1322 ante.

2 *R v Tolson* (1889) 23 QBD 168 at 187; *DPP for Northern Ireland v Lynch* [1975] AC 653 at 684-685, [1975] 1 All ER 913 at 930, HL; *R v Venna* [1976] QB 421 at 428-429, [1975] 3 All ER 788 at 793, CA; *R v Miller* [1983] 2 AC 161 at 174, [1983] 1 All ER 978 at 980, HL; *R v Kimber* [1983] 3 All ER 316 at 319, [1983] 1 WLR 1118 at 1121, CA.

3 See *Sales-Matic Ltd v Hinchcliffe* [1959] 3 All ER 401, [1959] 1 WLR 1005, DC, where it was held that a declaration that lotteries were unlawful did not create an offence; *R v Staincross Justices, ex p Teasdale* [1961] 1 QB 170, [1960] 3 All ER 572, where an exempting section which provided mandatory conditions of exemption was held not to make non-observance of the conditions criminal; *Miller v FA Sadd & Son Ltd, Miller v Pickering Bull & Co Ltd* [1981] 3 All ER 265 at 270, DC. As to the principle against doubtful penalisation see PARA 1456 post.

4 *Thames Launches Ltd v Trinity House Corpn (Deptford Strond)* [1961] Ch 197, [1961] 1 All ER 26. However, it was emphasised by Buckley J at 204 and 29 that the jurisdiction to restrain must be exercised with the greatest care. See also CIVIL PROCEDURE vol 11 (2009) PARA 497.



Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(ii) Sanctions and Remedies for Breach of Statutory Duty/1356. Mens rea in statutory offences.

### 1356. Mens rea in statutory offences.

An Act which creates an offence may expressly or by implication<sup>1</sup> define the particular state of mind which is an element of the offence, or it may be silent on this point<sup>2</sup>. It has been said that it is of the utmost importance to the protection of the liberty of the subject<sup>3</sup> that a court should always bear in mind that unless an Act, either expressly or by implication, rules out mens rea as a constituent part of such an offence, the court should not find a person guilty of it unless he has a guilty mind<sup>4</sup>. Thus, whenever an Act creating an offence is silent as to mens rea there is a presumption that, in order to give effect to the will of Parliament, the court must read in words appropriate to require mens rea<sup>5</sup> and the court ought not to hold that the offence is absolute, in the sense that no mens rea at all is required<sup>6</sup>, unless it appears that this must have been the intention of Parliament<sup>7</sup>. This presumption does not apply in the case of offences which are not truly criminal in character but are merely acts prohibited under a penalty<sup>8</sup>.

1 As to implied enactments see PARA 1234 ante.

2 'The full definition of every crime contains expressly or by implication a proposition as to a state of mind... The mental element of most crimes is marked by one of the words 'maliciously', 'fraudulently', 'negligently', or 'knowingly', but it is the general - I might I think say the invariable - practice of the legislature to leave unexpressed some of the mental elements of crime. In all cases whatever, competent age, sanity, and some degree of freedom from some kinds of coercion are assumed to be essential to criminality, but I do not believe they are ever introduced into any statute by which any particular crime is defined': *R v Tolson* (1889) 23 QBD 168 at 187 per Stephen J. See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 8-9.

3 See PARA 1455 et seq post.

4 *Brend v Wood* (1946) 62 TLR 462 at 463, DC; *Sweet v Parsley* [1970] AC 132 at 152, [1969] 1 All ER 347 at 353, HL, per Lord Morris of Borth-y-Gest; *R v Kimber* [1983] 3 All ER 316 at 319, [1983] 1 WLR 1118 at 1121, CA, per Lawton LJ.

5 *Sweet v Parsley* [1970] AC 132 at 148, [1969] 1 All ER 347 at 349, HL, per Lord Reid. See also *R v Gould* [1968] 2 QB 65, [1968] 1 All ER 849, CA; *Warner v Metropolitan Police Comr* [1969] 2 AC 256, [1968] 2 All ER 356, HL. It has been said that it is a general principle of construction of any enactment creating an offence that, even where the words used would not in any other context connote the necessity for any particular mental element, they are nevertheless to be read as subject to the implication that a necessary element in the offence is the absence of a belief, held honestly upon reasonable grounds, in the existence of facts which, if true, would make the act innocent: *Sweet v Parsley* supra at 163 and 361 per Lord Diplock; *R v Pheko* [1981] 3 All ER 84, [1981] 1 WLR 1117, CA. Cf *Hyam v DPP* [1975] AC 55, [1974] 2 All ER 41, HL; *DPP v Morgan* [1976] AC 182, [1975] 2 All ER 347, HL; *DPP v Majewski* [1977] AC 443, [1976] 2 All ER 142, HL.

6 Offences are sometimes referred to as 'absolute' where the actual words of the offence import some degree of knowledge, for example the word 'possession', without there being any additional implication of mens rea: see *Warner v Metropolitan Police Comr* [1969] 2 AC 256, [1968] 2 All ER 356, HL; *Sweet v Parsley* [1970] AC 132 at 158, [1969] 1 All ER 347 at 358, HL, per Lord Pearce; *R v Hussain* [1981] 2 All ER 287, [1981] 1 WLR 416, CA.

7 *Sweet v Parsley* [1970] AC 132, [1969] 1 All ER 347, HL. The mere absence of adverbs such as 'knowingly' is thus not enough to show that Parliament intended to create an absolute offence: *Sweet v Parsley* supra at 156 and 356 per Lord Pearce, and at 162 and 361 per Lord Diplock.

8 *Alphacell Ltd v Woodward* [1972] AC 824, [1972] 2 All ER 475, HL (pollution of river; offence in the nature of public nuisance); *R v Miller* [1975] 2 All ER 974, [1975] 1 WLR 1222, CA (driving while disqualified). A

distinction is drawn between the mental element deemed to be required in statutory offences of a truly criminal character, where the forbidden act is regarded as wrong in itself, and that needed for regulatory offences which are quasi-criminal and concern a mere prohibition. The latter are often treated as intended to be absolute offences, not requiring mens rea. This is particularly so where the enactment in question deals with an issue of acute social concern, such as public safety. Even here however, the presumption that mens rea is required stands unless it is shown that strict liability will be effective to promote the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act: *Gammon (Hong Kong) Ltd v A-G of Hong Kong* [1985] AC 1, [1984] 2 All ER 503, PC; *Wings Ltd v Ellis* [1985] AC 272, [1984] 3 All ER 577, HL; *Seaboard Offshore Ltd v Secretary of State for Transport, The Safe Carrier* [1993] 3 All ER 25, [1993] 1 WLR 1025, DC; *R v Collett* [1994] 2 All ER 372, [1994] 1 WLR 475, CA; *R v Bezzina, R v Codling, R v Elvin* [1994] 3 All ER 964, [1994] 1 WLR 1057, CA.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(ii) Sanctions and Remedies for Breach of Statutory Duty/1357. Statutory penalties.

### 1357. Statutory penalties.

The mere fact of a statute imposing a penalty for the non-performance of an act implies a legal duty to do that act, whatever may be the destination of the penalty<sup>1</sup>, but it does not necessarily follow that a person who suffers damage through the non-performance of the act has a right of action<sup>2</sup>. The imposition by a statute of a penalty for the performance of a particular act does not make the prohibited act an offence where the penalty is made recoverable as a civil debt<sup>3</sup> or render the act one that is against public policy and thus prevent an action in respect of it<sup>4</sup>.

If a penalty is created by an enactment which does not say who may recover it, and it is not created for the benefit of a person aggrieved<sup>5</sup> and the offence is not against an individual, the penalty belongs to the Crown, which alone can sue for it<sup>6</sup>.

1 *Redpath v Allan, The Hibernian* (1872) LR 4 PC 511 at 517.

2 See eg *Lonrho Ltd v Shell Petroleum Co Ltd (No 2)* [1982] AC 173, [1981] 2 All ER 456, HL; and TORT.

3 *A-G v Bradlaugh* (1885) 14 QBD 667 at 687, CA. See also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 2. For examples see the Distress for Rent Act 1737 s 3 (see DISTRESS vol 13 (2007 Reissue) PARA 1065); and fines under the Stamp Act 1891 (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1117). However, since the abolition of the common informer procedure by the Common Informers Act 1951 s 1 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 2), provisions enabling penalties to be recovered in civil courts are few in number.

4 *Swan v Bank of Scotland* (1835) 2 Mont & A 656 at 661, HL; *Cundell v Dawson* (1847) 4 CB 376. See also the notes to *Collins v Blanton* (1767) 1 Smith LC (13th Edn) 369 at 430.

5 As to cases in which penalties and other fines recovered in a magistrates' court are not required to be paid to the Secretary of State see the Justices of the Peace Act 1997 s 60(2); and cf MAGISTRATES vol 29(2) (Reissue) PARA 881. The functions of the Secretary of State under the 1979 Act were transferred to the Lord Chancellor by the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992, SI 1992/709. For the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARAS 656, 664.

6 *Bradlaugh v Clarke* (1883) 8 App Cas 354 at 358, HL.

## UPDATE

### 1357 Statutory penalties

NOTE 5--1979 Act s 61(2), consolidated in the Justices of the Peace Act 1997 s 60(2), repealed: Courts Act 2003 Sch 10.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(ii) Sanctions and Remedies for Breach of Statutory Duty/1358. Judicial review.

### **1358. Judicial review.**

Where it is alleged that in reaching a decision under an enactment<sup>1</sup> a person has failed to comply with the duty to observe legality<sup>2</sup>, rationality<sup>3</sup>, or procedural propriety<sup>4</sup> any person interested<sup>5</sup> may apply for the remedy of judicial review<sup>6</sup>.

On judicial review of a matter concerned with public law<sup>7</sup> the High Court may make an order of mandamus<sup>8</sup>, prohibition<sup>9</sup>, or certiorari<sup>10</sup> or may, where it appears 'just and convenient', make a declaration, or grant an injunction; and there is also power to award damages where these could have been obtained if the matter had been raised by action<sup>11</sup>.

Where an Act creates a new right (such as a right to recover money) which has no existence apart from the Act creating it, and at the same time prescribes a particular method of enforcing it in a particular court, it is, in general, to that remedy and that court alone that recourse may be had, and a person seeking to enforce the right should not first apply to the High Court to declare that the right exists<sup>12</sup>. The jurisdiction of the High Court to make a declaration is, however, discretionary, and in cases involving difficult questions of construction of Acts it is proper that the court should declare what are the rights of the subject<sup>13</sup>. The court may grant a declaration even though there was no 'decision' and no prerogative order would issue<sup>14</sup>.

The High Court may on judicial review grant an injunction in the nature of quo warranto in respect of a public office<sup>15</sup>.

On judicial review the High Court exercises 'a supervisory and not an appellate jurisdiction', and its approach is necessarily different from its approach when acting as a court of appeal<sup>16</sup>. The Supreme Court sitting in one of its other manifestations (for example as the Court of Appeal) may in the course of hearing a case convert itself temporarily into a Divisional Court for the purpose of disposing of an aspect of the case by judicial review<sup>17</sup>.

An application for judicial review must be made promptly and in any event within three months, unless the court extends this period<sup>18</sup>. Judicial review is not granted where the applicant has available sufficient relief by other procedures, as where the legislation in question provides its own form of remedy<sup>19</sup>, though it seems that this does not apply to prohibition<sup>20</sup>.

The sanction for disobedience to a prerogative order is attachment, or fining, for contempt of court. A civil action for damages may also lie at the suit of any party injured. Furthermore the disobedient act is, like any act done in defiance of a court order, illegal and invalid<sup>21</sup>.

The fact that a person could have challenged an act or omission by judicial review does not preclude that person from relying on its nullity or illegality in other proceedings<sup>22</sup>.

1 For the meaning of 'enactment' see PARA 1232 ante.

2 See PARA 1332 ante.

3 See PARA 1333 ante.

4 See PARA 1334 ante.

5 The applicant must have a sufficient interest in the matter: Supreme Court Act 1981 s 31(3); RSC Ord 53 r 3(7). However, former strict rules regarding locus standi have been greatly relaxed: see *R v IRC, ex p National*

*Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617 at 656, [1981] 2 All ER 93 at 115-116, HL, per Lord Roskill. As to locus standi see further JUDICIAL REVIEW vol 61 (2010) PARA 656.

6 See the Supreme Court Act 1981 s 31; and RSC Ord 53. As to enactments purporting to oust or curtail judicial review see PARA 1349 ante. As to judicial review of delegated legislation see PARA 1521 post. As to the procedure on an application for judicial review see CIVIL PROCEDURE vol 12 (2009) PARA 1530 et seq. Judicial review is carried out mainly by the grant of prerogative orders; these are discretionary and cannot be claimed as of right: *O' Reilly v Mackman* [1983] 2 AC 237 at 284, [1982] 3 All ER 1124 at 1126, HL, per Lord Diplock. The jurisdiction dates from about 1662: *Linnett v Coles* [1987] QB 555 at 561, [1986] 3 All ER 652 at 656, CA. 'No doubt because of the growth of central and local government intervention in the affairs of the ordinary citizen since the 1939-45 war, and the consequent increase in the number of administrative bodies charged by Parliament with the performance of public duties, the use of prerogative orders to check a usurpation of power by such bodies to the disadvantage of the ordinary citizen, or to insist on due performance by such bodies of their statutory duties and to maintain due adherence to the laws enacted by Parliament, has greatly increased': *R v IRC, ex p National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617 at 656, [1981] 2 All ER 93 at 115, HL, per Lord Roskill. Leave of the court is required for the bringing of an application: Supreme Court Act 1981 s 31(3); RSC Ord 53 r 3. Leave may be granted by the Court of Appeal if that is found convenient: *Chief Adjudication Officer v Foster* [1992] QB 31, [1991] 3 All ER 846, CA (on appeal [1993] AC 754, [1993] 1 All ER 705, HL); *R v Secretary of State for the Home Department, ex p Muboyayi* [1992] QB 244 at 254, [1991] 4 All ER 72 at 78, CA.

The term 'judicial review' was first formally applied to this type of procedure when the term was introduced by rules of court in 1977: see RSC Ord 53. Under the current regime, an applicant for relief is not (as was formerly the case) defeated by asking for the wrong remedy: see *R v IRC, ex p National Federation of Self-Employed and Small Businesses Ltd* supra at 647-648 and 109 per Lord Scarman. By applying for 'judicial review' overall, the applicant is treated as asking for whichever of the prerogative orders or other remedies may be found by the High Court to be appropriate on the facts. This reform drastically ameliorated the position of applicants for prerogative orders by removing the disadvantages, particularly in relation to discovery, which previously made this an inadequate remedy: see *O' Reilly v Mackman* supra at 285 and 1130.

7 Judicial review is available only within the field of public law, as opposed to private law: *O' Reilly v Mackman* [1983] 2 AC 237, [1982] 3 All ER 1124, HL; *Davy v Spelthorne Borough Council* [1984] AC 262, [1983] 3 All ER 278, HL; *Doyle v Northumbria Probation Committee* [1992] ICR 121, [1991] 4 All ER 294; *Tsai v Woodworth* (1983) 127 Sol Jo 858. The distinction was thus explained in *Davy v Spelthorne Borough Council* supra at 276 and 285 per Lord Wilberforce: 'The expressions 'private law' and 'public law' have recently been imported into the law of England from countries which, unlike our own, have separate systems concerning public law and private law... In this country they must be used with caution, for, typically, English law fastens not on principles but on remedies. The principle remains intact that public authorities and public servants are, unless clearly exempted, answerable in the ordinary courts for wrongs done to individuals. But by an extension of remedies and flexible procedure it can be said that something resembling a system of public law is being developed.' Judicial statements made before 1950 on matters of public law are likely to be misleading in modern conditions: see *R v IRC, ex p National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617 at 640, [1981] 2 All ER 93 at 103, HL, per Lord Diplock.

For obtaining judicial review there must be 'not merely a public but potentially a governmental interest in the decision-making power in question': *R v Chief Rabbi of the United Hebrew Congregation of Great Britain and the Commonwealth, ex p Wachmann* [1993] 2 All ER 249 at 254, [1992] 1 WLR 1036 at 1041. Although judicial review is a public law remedy, this does not preclude its being available for the enforcement of a duty imposed by a private Act: see *R v London and North-Western Ry* [1899] 1 QB 921. As to private Acts see PARA 1211 ante.

8 The writ of mandamus ('we command') was a prerogative writ which, as finally developed, became an original writ issuable out of the Crown side of the King's Bench wherever the applicant had a legal right arising out of the public status of the respondent, but no other specific remedy: *Bagg's Case* (1615) 11 Co Rep 93b; *Benson v Paull* (1856) 6 E & B 273. The writ commanded the respondent to satisfy the right. The Administration of Justice (Miscellaneous Provisions) Act 1938 s 7(1) (repealed) provided that the prerogative writs of mandamus, prohibition and certiorari were no longer to be issued by the High Court; instead s 7(2) (repealed) provided that in any case where the High Court would have had jurisdiction to order the issue of such a writ it might make an order of mandamus or, as the case might be, of prohibition or certiorari. The Supreme Court Act 1981 s 29(1) (which replaced those provisions) gave the High Court power to make orders of mandamus, prohibition or certiorari 'in those classes of cases in which it had power to do so immediately before the commencement of this Act'. The courts are steadily widening their power to make prerogative orders, so the power does not in fact remain what it was at an earlier period. As to orders of prohibition and certiorari see notes 9-10 infra.

Prerogative orders of mandamus have frequently been issued to compel performance of public-law duties imposed by statute: see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

An order of mandamus is never addressed to the Crown, though it may in certain circumstances be addressed to government officials: see JUDICIAL REVIEW vol 61 (2010) PARA 714. For a modern judicial exposition of the scope

of mandamus see *R v IRC, ex p National Federation of Self Employed and Small Businesses Ltd* [1982] AC 617, [1981] 2 All ER 93, HL. As to mandamus generally see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

9 The old prerogative writ of prohibition issued out of the King's Bench, Chancery, Exchequer or Common Pleas. Its purpose was to prevent an inferior court from acting in excess of jurisdiction, or without any jurisdiction at all. Its ambit was much the same as that of certiorari (see note 10 infra), the practical difference being that prohibition lay up to the point when the inferior court made its order and certiorari thereafter. As to the replacement of the writ with the prerogative order see note 8 supra.

The fact that the enactment provides for a decision to be confirmed by Parliament or any other body does not preclude prohibition while the confirmation is pending: *R v Electricity Comrs, ex p London Electricity Joint Committee Co (1920) Ltd* [1924] 1 KB 171 at 198, CA, per Atkin LJ. The judgment of Atkin LJ in *R v Electricity Comrs, ex p London Electricity Joint Committee Co (1920) Ltd* supra contains a full historical treatment of prohibition and certiorari. As to prohibition and certiorari generally see JUDICIAL REVIEW vol 61 (2010) PARA 693 et seq; and for special rules relating to prohibition see JUDICIAL REVIEW vol 61 (2010) PARA 699 et seq.

10 The prerogative writ of certiorari ('to be more fully informed (or made certain) of ') was the pre-eminent supervisory instrument. It issued only out of the Crown side of the King's Bench (the list of cases awaiting judicial review is still known as the Crown Office list), though there was an analogous procedure, known as the bill of certiorari, in Chancery matters. The writ of certiorari commanded judges or officers of inferior courts to certify or return, by what was known as a 'speaking order', the records of a cause in their courts, to the end that justice might be done. On inspection of this the superior court might quash the record, eg for error of law on its face or want of natural justice. As to the replacement of the writ with the prerogative order see note 8 supra. It seems that even where an order has, in accordance with the empowering enactment, been approved by each House of Parliament it may still be subject to certiorari since, except as provided by an enactment, such resolutions have no legislative effect: *R v Electricity Comrs, ex p London Electricity Joint Committee Co (1920) Ltd* [1924] 1 KB 171, CA. As to prohibition and certiorari generally see JUDICIAL REVIEW vol 61 (2010) PARA 693 et seq; and for special rules relating to certiorari see JUDICIAL REVIEW vol 61 (2010) PARAS 697-698.

11 See the Supreme Court Act 1981 s 31(2), (4). 'The application for judicial review, where a declaration, an injunction or damages are sought, is a summary way of obtaining a remedy which could be obtained at trial in an action begun by writ; and it is available only where in all the circumstances it is just and convenient. If issues of fact, or law and fact, are raised which it is neither just nor convenient to decide without the full trial process, the court may dismiss the application or order, in effect, a trial': *R v IRC, ex p Rossminster Ltd* [1980] AC 952 at 1025, [1980] 1 All ER 80 at 104, HL, per Lord Scarman. As to the last sentence of this dictum, it should be noticed that the High Court can in effect require the applicant to proceed (if at all) by writ if it refuses leave to make the application for judicial review. On the other hand, proceeding by writ may be held an abuse of the process of the court if the matter concerns public law and judicial review is the appropriate remedy because, eg, speed is required in the public interest: *O' Reilly v Mackman* [1983] 2 AC 237 at 284, [1982] 3 All ER 1124 at 1126, HL. See also *Roy v Kensington and Chelsea and Westminster Family Practitioner Committee* [1992] 1 AC 624, [1992] 1 All ER 705, HL. As to the grant of injunctions see also PARA 1359 post.

12 *Barraclough v Brown* [1897] AC 615, HL; *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1960] AC 260 at 289-290, [1959] 3 All ER 1 at 8, HL, per Lord Goddard, and at 302-303 and 16-17 per Lord Jenkins, where an application to the court to decide the scope of statutory liabilities is distinguished. Cf *Munnich v Godstone RDC* [1966] 1 All ER 930, [1966] 1 WLR 427, CA; *Ealing London Borough Council v Race Relations Board* [1972] AC 342, [1972] 1 All ER 105, HL, where in each case the statutory remedy was found to be neither exclusive nor, in the circumstances, appropriate.

13 *Vine v National Dock Labour Board* [1957] AC 488, [1956] 3 All ER 939, HL; *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1960] AC 260 at 287, [1959] 3 All ER 1 at 7, HL, per Viscount Simonds. There are dicta to the effect that the courts should proceed cautiously where an administrative or quasi-judicial decision of a minister is involved: see *Pyx Granite Co Ltd v Ministry of Housing and Local Government* supra at 287 and 7 per Viscount Simonds. A declaration will not be granted where it would not be effective to determine the applicant's rights: *Punton v Ministry of Pensions and National Insurance (No 2)* [1964] 1 All ER 448, [1964] 1 WLR 226, CA. As to declarations generally see JUDICIAL REVIEW vol 61 (2010) PARAS 716, 719. As to the need to proceed by way of an application for judicial review where what is sought is essentially judicial review, see *Cocks v Thanet District Council* [1983] 2 AC 286, [1982] 3 All ER 1135, HL; and CIVIL PROCEDURE vol 11 (2009) PARA 1530 et seq.

14 *R v Secretary of State for Employment, ex p Equal Opportunities Commission* [1995] 1 AC 1; sub nom *Equal Opportunities Commission v Secretary of State for Employment* [1994] 1 All ER 910, HL (letter from Secretary of State to applicant giving his view on the validity of an enactment not a 'decision'). A declaration may be defined as 'a formal statement by a court pronouncing upon the existence or non-existence of a legal state of affairs': Zamir, *The Declaratory Judgment* (2nd Edn, 1993) p 1. Where it deems it sufficient to declare the law in question, rather than making an order carrying the sanction of punishment for contempt of court, the High Court, on an application for judicial review, will content itself with making a declaration. If it does so, the declaration must be in terms which resolve the question of law at issue. However the court may state the grounds for the decision in the alternative, thus leaving the detail of the law to some extent uncertain: see eg *R*

*v Secretary of State for the Environment, ex p Greater London Council* (1983) Times, 2 December. The court will not grant declaratory relief in order to decide hypothetical or future questions where there is no current dispute between the parties: *Re Barnato, Joel v Sanges* [1949] Ch 258 at 269, [1949] 1 All ER 515 at 529-521, CA; *Mercury Communications Ltd v Director General of Telecommunications* (1994) Times, 3 August, CA.

15 The prerogative writ of quo warranto (by what right do you exercise this purported power?) was superseded by informations in the nature of quo warranto, which were in turn abolished by the Administration of Justice (Miscellaneous Provisions) Act 1938 s 9 (repealed). This substituted a new procedure whereby application could be made for an injunction. It was nevertheless applied with the old law in mind: see eg *Barnard v National Dock Labour Board* [1953] 2 QB 18, [1953] 1 All ER 1113, CA. The matter is now dealt with by the Supreme Court Act 1981 ss 30, 31(1)(c). These provide that, on an application for judicial review in a case where a person not entitled to do so acts in a public office, the High Court may grant an injunction restraining him from doing so, and may declare the office vacant. The offices in question are 'any substantive office of a public nature and permanent character which is held under the Crown or which has been created by any statutory provision or royal charter': s 30(2). 'Statutory provision' means any enactment, whenever passed, or any provision contained in subordinate legislation, as defined in the Interpretation Act 1978 s 21(1) (see PARA 1232 note 2 ante) whenever made: Supreme Court Act 1981 s 151(1).

16 *Pickwell v Camden London Borough Council* [1983] QB 962 at 978, [1983] 1 All ER 602 at 612, DC. Evidence is by affidavit, which renders judicial review an inappropriate procedure where issues of fact need to be investigated. However it is possible for such issues to be left to be determined by a single judge as if the proceedings had been begun by writ: RSC Ord 53 r 9(5); for an example see *R v Chief Constable of the Lancashire Constabulary, ex p Parker* [1993] QB 577 at 581, [1993] 2 All ER 56 at 58, DC. This supervisory principle appears in other areas of law also; eg a similar jurisdiction is exercised by the High Court in appeals from magistrates' courts by way of case stated: *Bracegirdle v Oxley, Bracegirdle v Cobley* [1947] KB 349, DC; *R v Chesterfield Justices, ex p Kovacs* [1992] 2 All ER 325.

17 See *R v Miall* [1992] QB 836, [1992] 3 All ER 153, CA (followed in *R v Lee* [1993] 2 All ER 170, [1993] 1 WLR 103, CA) and the cases there cited.

18 RSC Ord 53 r 4. Undue delay in making the application is a ground for refusing an order: see the Supreme Court Act 1981 s 31(6). The fact that the time laid down by the relevant Act for performance of the duty in question has elapsed will not preclude relief: *Stepney Borough Council v John Walker & Sons Ltd* [1934] AC 365, HL.

19 Here the High Court usually requires a complainant to use the specific statutory remedy rather than applying for a prerogative order: *R v Registrar of Joint Stock Companies* (1888) 21 QBD 131; *Cummings v Birkenhead Corpn* [1972] Ch 12, [1971] 2 All ER 881, CA; *R v Powys County Council, ex p Smith* (1982) 81 LGR 342, Times, 16 June; *Re Preston* [1985] AC 835; sub nom *R v IRC, ex p Preston* [1985] 2 All ER 327, HL; *R v Chief Constable of Merseyside Police, ex p Calveley* [1986] QB 424, [1986] 1 All ER 257, CA; *Woolwich Equitable Building Society v IRC (No 2)* [1993] AC 70 at 101, [1991] 4 All ER 577 at 602, CA (on appeal [1993] AC 70, [1992] 3 All ER 737, HL); *R v Birmingham City Council, ex p Ferrero Ltd* [1993] 1 All ER 530, CA. Cf *Southwark London Borough Council v H* [1985] 2 All ER 657, [1985] 1 WLR 861, DC. However it was held in *R v IRC, ex p MFK Underwriting Agents Ltd* [sic] [1990] 1 WLR 1545, 62 TC 607, DC, following *Re Preston* supra, that where a statutory body abuses its power unfairly, as by defeating the legitimate expectation of subjects who had relied on its pronouncements, judicial review will lie despite the availability of statutory appeal procedures. Where judicial review was sought of a refusal by an examining magistrate to commit for trial, it being argued by the respondent that the prosecutor should first have pursued the alternative remedy of seeking a voluntary bill of indictment, the court said: '... it is a matter of discretion; and it follows that the court is entitled to take into account the convenience of the other remedy and the common sense of the situation': *R v Metropolitan Stipendiary Magistrate, ex p London Waste Regulation Authority, Berkshire County Council v Scott* [1993] 3 All ER 113 at 120, DC, per Watkins LJ.

20 *Channel Coaling Co v Ross* [1907] 1 KB 145.

21 *Clarke v Chadburn* [1985] 1 All ER 211, [1985] 1 WLR 78, Sir Robert Megarry V-C.

22 See eg *R v Jenner* [1983] 2 All ER 46, [1983] 1 WLR 873, CA; *Wandsworth London Borough Council v Winder* [1985] AC 461, [1984] 3 All ER 976, HL; *R v Crown Court at Reading, ex p Hutchinson, R v Devizes Justices, ex p Lee* [1988] QB 384, [1988] 1 All ER 333, DC (Crown Court required to determine validity of byelaw impugned in prosecution under it). Cf para 1341 note 3 ante.

## UPDATE

### 1358 Judicial review

TEXT AND NOTES--RSC replaced by the Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

NOTES--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

NOTE 6--1981 Act s 31 amended: Civil Procedure (Modification of Supreme Court Act 1981) Order 2004, SI 2004/1033.

TEXT AND NOTES 8-10--Orders of mandamus, prohibition and certiorari are now known as mandatory, prohibiting and quashing orders: Senior Courts Act 1981 s 29 (amended by SI 2004/1033).

NOTE 10--'Crown Office List' now renamed 'Administrative Court': *Practice Note* [2000] 4 All ER 1071, DC.

NOTE 11--1981 Act s 31(2) amended, s 31(4) substituted: SI 2004/1033.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(ii) Sanctions and Remedies for Breach of Statutory Duty/1359. Public law injunction.

### **1359. Public law injunction.**

The High Court and county courts possess the old equity jurisdiction, so the remedies this provided are available in relation to breach of statutory duty<sup>1</sup>. The public is concerned in seeing that statutes are obeyed<sup>2</sup> so the Attorney General, in exercise of his function as the guardian of the public interest<sup>3</sup>, may apply to the High Court<sup>4</sup> to exercise its equitable jurisdiction of granting an injunction against the breach of a statutory duty<sup>5</sup> or the infringement or threatened infringement of a public right<sup>6</sup>. Local authorities may also so apply where required or enabled to do so<sup>7</sup>. However, it is only in exceptional cases that the court will grant an injunction in aid of the criminal law to restrain the commission of criminal acts<sup>8</sup>. An individual can apply where he has suffered interference with a private right, or special damage over and above that suffered by the public, or where the statute makes special provision for his protection<sup>9</sup>, but otherwise can only act as relator<sup>10</sup>, the proceedings being brought in the name of the Attorney General<sup>11</sup>.

In a relator action for an injunction to restrain the breach of a statutory duty there are two quite separate discretions to be exercised. First, the Attorney General has a discretion to determine whether or not the action is to be commenced, and if he decides that it is, the court cannot question his decision<sup>12</sup>. Secondly it is for the court, in the exercise of its own independent discretion, to determine what the result of the action should be<sup>13</sup>, although if a clear breach of the requirements of the Act has been established, the court will normally grant the injunction in the absence of exceptional circumstances<sup>14</sup>. In an action by the Attorney General the court will not necessarily refuse an injunction simply because the Act in question provides for the imposition of a fine<sup>15</sup> or for some other remedy, although it will take the existence of the statutory remedy into account in exercising its discretion<sup>16</sup>. In particular, if persons acting in breach of an Act persist in doing so, despite the infliction of the punishment prescribed by the Act, and the Attorney General representing the public interest asks for an injunction, the court will normally grant one, whether or not specific injury to the public has been proved<sup>17</sup>.

Delay may be a ground on which the court will refuse to grant an injunction to enforce a right under a statute even where the proceedings are brought by the Attorney General or some other enforcement agency in the public interest<sup>18</sup>.

1 See *Stevens v Chown* [1901] 1 Ch 894 at 904 per Farwell J ('... there was nothing to prevent the old Court of Chancery from granting an injunction to restrain the infringement of a newly created statutory right, unless the Act of Parliament creating the right provided a remedy which it enacted should be the only remedy, subject only to this, that the right was such a right as the [Court of Chancery] under its original jurisdiction would take cognisance of.') Cf *A-G v Sharp* [1931] 1 Ch 121, CA.

2 *A-G v Premier Line Ltd* [1932] 1 Ch 303 at 313.

3 See PARA 1344 ante.

4 le by proceedings taken in accordance with the Crown Proceedings Act 1947: see CROWN PROCEEDINGS AND CROWN PRACTICE.

5 As to the nature of a statutory duty see PARA 1322 ante.

6 See CIVIL PROCEDURE vol 11 (2009) PARAS 491-492. As to the effect of delay see CIVIL PROCEDURE vol 11 (2009) PARAS 373-375.

7 See eg the Local Government Act 1972 s 222; and *Gouriet v Union of Post Office Workers* [1978] AC 435 at 494, [1977] 3 All ER 70 at 94, HL, per Viscount Dilhorne; *Runnymede Borough Council v Ball* [1986] 1 All ER 629, [1986] 1 WLR 353, CA. See also *Stafford Borough Council v Elkenford Ltd* [1977] 2 All ER 519, [1977] 1 WLR 324, CA, where a local authority was required by the Shops Act 1950 s 71(1) (repealed) to enforce provisions of that Act. An action may be brought by the Attorney General at the relation of a local authority to enforce a byelaw of that authority: *A-G v Ashbourne Recreation Ground Co* [1903] 1 Ch 101.

8 *Gouriet v Union of Post Office Workers* [1978] AC 435, [1977] 3 All ER 70, HL, where the court regarded these cases as being either (1) where the prescribed penalty has proved inadequate to deter the offender from flouting the law (see eg *A-G v Harris* [1961] 1 QB 74, [1960] 3 All ER 207, CA); or (2) where the commission of the offence might cause grave and irreparable harm (see *A-G v Chaudry* [1971] 3 All ER 938, [1971] 1 WLR 1614, CA): *Gouriet v Union of Post Office Workers* supra at 435 and 83 per Lord Wilberforce, at 491 and 91-92 per Viscount Dilhorne, and at 500 and 99 per Lord Diplock. Cf the wider principle enunciated by Lord Denning MR in *Stafford Borough Council v Elkenford Ltd* [1977] 2 All ER 519 at 528, [1977] 1 WLR 324 at 329, CA.

9 See CIVIL PROCEDURE vol 11 (2009) PARAS 236-237, 408; CORPORATIONS vol 9(2) (2006 Reissue) PARA 1242. In such a case the fact that the statute provides another remedy does not necessarily exclude the grant of an injunction: see CIVIL PROCEDURE vol 11 (2009) PARA 351.

10 An individual may not apply for an injunction in his own name for the purpose of preventing public wrongs where he has no interest in preventing them other than as a member of the public: *Gouriet v Union of Post Office Workers* [1978] AC 435, [1977] 3 All ER 70, HL. See also CIVIL PROCEDURE vol 11 (2009) PARAS 351, 408. The relator is responsible for the costs: see generally CIVIL PROCEDURE vol 11 (2009) PARAS 236-237, 409.

11 See CIVIL PROCEDURE vol 11 (2009) PARA 409. See also PARA 1344 ante; and CIVIL PROCEDURE vol 11 (2009) PARA 236.

12 *LCC v A-G* [1902] AC 165 at 168, HL, per Lord Halsbury LC; *A-G v Birmingham, Tame and Rea District Drainage Board* [1910] 1 Ch 48 at 61, CA; *A-G v Bastow* [1957] 1 QB 514 at 520-521, [1957] 1 All ER 497 at 501; *A-G v Harris* [1961] 1 QB 74 at 87, 94, [1960] 3 All ER 207 at 211, 216, CA. See also CIVIL PROCEDURE vol 11 (2009) PARA 491. Equally, the court will not review his refusal to consent to a relator action: *Gouriet v Union of Post Office Workers* [1978] AC 435, [1977] 3 All ER 70, HL.

13 *A-G v Birmingham, Tame and Rea District Drainage Board* [1910] 1 Ch 48 at 61, CA; *A-G v Bastow* [1957] 1 QB 514 at 520-521, [1957] 1 All ER 497 at 501; *A-G v Harris* [1961] 1 QB 74 at 87, 94, [1960] 3 All ER 207 at 211, 216, CA. See also 631 HC Official Report (5th series) 1960, cols 684-695; and CIVIL PROCEDURE vol 11 (2009) PARA 491.

14 *A-G v Bastow* [1957] 1 QB 514 at 522-523, [1957] 1 All ER 497 at 502; *A-G v Harris* [1961] 1 QB 74 at 87, 94, [1960] 3 All ER 207 at 211, 216, CA; *A-G v Melville Construction Co Ltd* (1968) 67 LGR 309, 20 P & CR 131.

15 *A-G v Sharp* [1931] 1 Ch 121 at 133, CA, per Lord Hanworth MR.

16 See *A-G v Smith* [1958] 2 QB 173, [1958] 2 All ER 557; and CIVIL PROCEDURE vol 11 (2009) PARA 492. The court's jurisdiction to grant an injunction may of course be excluded if the Act expressly or by necessary implication so provides: see CIVIL PROCEDURE vol 11 (2009) PARA 351. As to the implied exclusion of remedies where an Act itself provides a special remedy see generally para 1353 et seq ante.



17 *A-G v Ely, Haddenham and Sutton Rly Co* (1869) 4 Ch App 194 at 199; *A-G v Sharp* [1931] 1 Ch 121, CA; *A-G v Premier Line Ltd* [1932] 1 Ch 303; *A-G v Bastow* [1957] 1 QB 514 at 521-522, [1957] 1 All ER 497 at 501-502 per Devlin J; *A-G v Harris* [1961] 1 QB 74 at 94, [1960] 3 All ER 207 at 216, CA, per Pearce LJ; *A-G v Chaudry* [1971] 3 All ER 938, [1971] 1 WLR 1614, CA. See also CIVIL PROCEDURE vol 11 (2009) PARAS 491-492.

18 *Associated Minerals Consolidated Ltd v Wyong Shire Council* [1975] AC 538 at 559-560, PC. See also *A-G v Johnson* (1819) 2 Wils Ch 87; *A-G v Sheffield Gas Consumers Co* (1853) 3 De GM & G 304. It is clear from *Associated Minerals Consolidated Ltd v Wyong Shire Council* supra that delay will weigh less heavily against a plaintiff acting on behalf of the public and in the public interest than against a private individual. See also CIVIL PROCEDURE vol 11 (2009) PARA 374.

## UPDATE

### 1359 Public law injunction

NOTE 7--As to injunctions in local authority proceedings see PARA 1359A.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(ii) Sanctions and Remedies for Breach of Statutory Duty/1359A. Injunctions in local authority proceedings: power of arrest and remand.

#### **1359A. Injunctions in local authority proceedings: power of arrest and remand.**

These provisions are in force in relation to England only: SI 2007/709.

These provisions apply to proceedings in which a local authority<sup>1</sup> is a party by virtue of a specified provision<sup>2</sup>. If the court<sup>3</sup> grants an injunction which prohibits conduct which is capable of causing nuisance or annoyance to a person it may<sup>4</sup> attach a power of arrest to any provision of the injunction<sup>5</sup>. Where such a power of arrest is attached to any provision of any such injunction, a constable may arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of the preceding provision<sup>6</sup>. Where a person is arrested in such a way he must be brought before the court within the period of 24 hours beginning at the time of his arrest, and if the matter is not then disposed of forthwith, the court may remand him<sup>7</sup>. Where the court has such a power to remand a person it may remand the person in custody, that is, commit him to custody to be brought before the court at the end of the period of remand or at such earlier time as the court may require, or remand him on bail, in accordance with the following provisions<sup>8</sup>. The court may remand the person on bail (1) by taking from him a recognizance, with or without sureties, conditioned as provided<sup>9</sup>, or (2) by fixing the amount of the recognizances with a view to their being taken subsequently, and in the meantime committing him to custody as mentioned above<sup>10</sup>. Where a person is brought before the court after remand, the court may further remand him<sup>11</sup>. The court must not remand a person for a period exceeding eight clear days except that if the court remands him on bail, it may remand him for a longer period if he and the other party consent, and if the court adjourns a case in relation to a remand for a medical examination and report<sup>12</sup> the court may remand him for the period of adjournment<sup>13</sup>. Where the court has the power to remand a person in custody it may, if the remand is for a period not exceeding three clear days, commit him to the custody of a constable<sup>14</sup>. If the court is satisfied that a person who has been remanded is unable by reason of illness or accident to appear or be brought before the court at the expiration of the period for which he was remanded, the court may, in his absence, remand him for a further time<sup>15</sup>. Such a power may, in the case of person who was remanded on bail, be exercised by enlarging his recognizance and those of any sureties for him to a later time<sup>16</sup>. Where a person remanded on bail is bound to appear before the court at any time and the court has no power to remand him under the above provisions, the court may in his absence enlarge his recognizance and those of

any sureties for him to a later time<sup>17</sup>. The enlargement of his recognizance is to be deemed to be a further remand<sup>18</sup>. The court may when remanding a person on bail under these provisions require him to comply, before release on bail or later, with such requirements as appear to the court to be necessary to secure that he does not interfere with witnesses or otherwise obstruct the course of justice<sup>19</sup>. If the court has reason to consider that a medical report will be required, the power to remand a person may be exercised for the purpose of enabling a medical examination and report to be made<sup>20</sup>. If such a power is so exercised the adjournment must not be in force for more than three weeks at a time in a case where the court remands the accused person in custody, or for more than four weeks at a time in any other case<sup>21</sup>.

1 For these purposes, 'local authority' has the same meaning as in the Local Government Act 1972 s 222 (LOCAL GOVERNMENT vol 69 (2009) PARA 573): Police and Justice Act 2006 s 27(12)(b).

2 Ibid s 27(1). The provision specified is the Local Government Act 1972 s 222: Police and Justice Act 2006 s 27(1).

3 For these purposes, 'the court' means the High Court or a county court and includes, in relation to the High Court, a judge of that court, and, in relation to a county court, a judge or district judge of that court: Police and Justice Act 2006 s 27(12)(c).

4 Ie if the Police and Justice Act 2006 s 27(3) applies. Section 27(3) applies if the local authority applies to the court to attach the power of arrest and the court thinks that either (1) the conduct mentioned in s 27(2) consists of or includes the use or threatened use of violence; or (2) there is a significant risk of harm to the person mentioned in s 27(2): s 27(3). For these purposes, 'harm' includes serious ill-treatment or abuse, whether physical or not: s 27(12)(a).

As to the procedure on an application by a local authority under s 27(3) see CPR 65.8-65.10 (added by SI 2004/1306; and amended by SI 2007/2204).

5 Police and Justice Act 2006 s 27(2).

6 Police and Justice Act 2006 s 27(4). After making an arrest under s 27(4) the constable must as soon as is reasonably practicable inform the local authority: s 27(5). If there is reason to suspect that a person who has been arrested under s 27(4) is suffering from mental disorder within the meaning of the Mental Health Act 1983 (see MENTAL HEALTH vol 30(2) (Reissue) PARA 402) the court is to have the same power to make an order under s 35 (MENTAL HEALTH vol 30(2) (Reissue) PARA 489) as the Crown Court has under s 35 in the case of an accused person within the meaning of s 35: Police and Justice Act 2006 s 27(11) (amended by Mental Health Act 2007 Sch 1 para 26).

7 Police and Justice Act 2006 s 27(6). For the purposes of s 27(6), when calculating the period of 24 hours, no account is to be taken of Christmas Day, Good Friday or any Sunday: s 27(7).

8 Police and Justice Act 2006 s 27(6), Sch 10 paras 1(1), 2(1).

9 Ie where a person is remanded on bail, the court may direct that his recognizance be conditioned for his appearance (1) before that court at the end of the period of remand, or (2) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned: Police and Justice Act 2006 Sch 10 para 3(1). Where a recognizance is conditioned for a person's appearance as mentioned in head (2) above, the fixing of any time for him next to appear is to be deemed to be a remand: Sch 10 para 3(2). Nothing in Sch 10 para 3 affects the power of the court at any subsequent hearing to remand him afresh: Sch 10 para 3(3).

10 Police and Justice Act 2006 Sch 10 para 2(2). Where under text head (2) the court fixes the amount in which the principal and his sureties, if any, are to be bound, the recognizance may afterwards be taken by such person as may be prescribed by rules of court, with the same consequences as if it had been entered into before the court: Sch 10 para 6.

11 Police and Justice Act 2006 Sch 10 para 2(3).

12 See Police and Justice Act 2006 s 27(9).

13 Police and Justice Act 2006 Sch 10 para 4(1). Sch 10 para 4(1) does not apply to the exercise of the powers conferred by Sch 10 para 5: Sch 10 para 5(5).

14 Police and Justice Act 2006 Sch 10 para 4(2).

- 15 Police and Justice Act 2006 Sch 10 para 5(1).
- 16 Police and Justice Act 2006 Sch 10 para 5(2).
- 17 Police and Justice Act 2006 Sch 10 para 5(3).
- 18 Police and Justice Act 2006 Sch 10 para 5(4).
- 19 Police and Justice Act 2006 Sch 10 para 7.
- 20 Police and Justice Act 2006 s 27(9).
- 21 Police and Justice Act 2006 s 27(10).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(ii) Sanctions and Remedies for Breach of Statutory Duty/1360. Tort of breach of statutory duty.

### **1360. Tort of breach of statutory duty.**

Breach of a statutory duty<sup>1</sup> may or may not constitute the tort of breach of statutory duty, depending on the intention indicated by the enactment imposing the duty<sup>2</sup>. The enactment may (1) state expressly that breach of the duty constitutes such a tort<sup>3</sup>; or (2) state expressly that breach of the duty does not constitute such a tort<sup>4</sup>; or (3) state neither proposition expressly, leaving the matter to be determined by inference<sup>5</sup>.

In determining which inference to draw, the court is guided by the following considerations:

- (a) it is necessary to determine the nature of the mischief with which the enactment was intended to deal and the extent of the remedy intended to be provided<sup>6</sup>;
- (b) in a modern Act any intended criminal sanction is likely to be expressly included, and so usually should not be treated as implied<sup>7</sup>;
- (c) if the Act creating the duty provides a particular sanction or remedy<sup>8</sup> there is less likely to be an implication that in addition the tort of breach of statutory duty is implied<sup>9</sup>; in particular, if no criminal sanction is laid down the inference is stronger that a civil sanction is intended<sup>10</sup>;
- (d) a right of action in tort is unlikely to be intended unless (i) the plaintiff is within the class of persons intended to be protected by the enactment<sup>11</sup> from an occurrence which is within the category of occurrences contemplated by the enactment<sup>12</sup>; and (ii) he suffers damage of the kind so contemplated<sup>13</sup>.

The remedies available for the tort of breach of statutory duty are the same as for tort generally<sup>14</sup>. Even where the breach of duty does not constitute such a tort, and no remedy is specified in the enactment creating the duty, a remedy will normally be available under the general law<sup>15</sup>.

Where the enactment itself provides a remedy the question may arise whether it is intended to be additional to the general sanctions and remedies available under the law<sup>16</sup> or in addition to them. The enactment may expressly or by implication exclude existing remedies<sup>17</sup>. If an offence is created by statute, with a given penalty, and is afterwards repeated in another Act, with a lesser penalty, there is a presumption that the second enactment amounts to an implied repeal of the former<sup>18</sup>. The same result may follow where a statute gives a new remedy or greater

penalty for an existing offence, if in addition it introduces special conditions altering the quality of the offence or the procedure in relation to it<sup>19</sup>.

Where the Act itself provides a remedy but there is no express or implied indication as to whether other remedies are also available, there is a *prima facie* presumption that it is intended to be the only one available<sup>20</sup>. This presumption will not always exist<sup>21</sup> and the question depends in each case on the construction of the enactment concerned<sup>22</sup>. The question is, however, one of the true construction of the particular statute concerned, and it may be the intention of the statute, as disclosed by its scope and by its wording, that other remedies should not be excluded<sup>23</sup>. The general principle equally applies where, although the statute does provide a remedy, part of the liability in question remains to be discharged after the statutory remedy has been exhausted<sup>24</sup>.

The period of limitation laid down for actions founded on tort<sup>25</sup> applies to an action for damages for breach of statutory duty<sup>26</sup>. The enactment in question may make special provision as to the time when a cause of action is to be deemed to have accrued<sup>27</sup>.

1 As to the nature of a statutory duty see PARA 1322 ante.

2 The common law treats actionable breach of statutory duty as a species of tort: *Thornton v Kirklees Metropolitan Borough Council* [1979] QB 626 at 642, [1979] 2 All ER 349 at 357, CA. Parliament also has recognised such breach to be a tort: see the Law Reform (Contributory Negligence) Act 1945 s 4 ('fault' means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from the 1954 Act, give rise to the defence of contributory negligence). See also eg the Sex Discrimination Act 1975 s 66(1). Statutory references to 'tort' include breach of statutory duty: *American Express Co v British Airways Board* [1983] 1 All ER 557, [1983] 1 WLR 701.

3 See eg the Mineral Workings (Offshore Installations) Act 1971 s 11 (amended by the Fatal Accidents (Northern Ireland) Order 1977, SI 1977/1251); the Resale Prices Act 1976 s 25(2), (3); the Building Act 1984 s 38; the Consumer Protection Act 1987 s 41(1). Cf the Fatal Accidents Act 1976 ss 1(1), 1A(1) (respectively substituted and added by the Administration of Justice Act 1982 s 3(1)), conferring a right of action in damages for breach of duty (ie 'any wrongful act, neglect or default') resulting in death without specifying the statutory or other duty involved.

4 See eg the Medicines Act 1968 s 133(2)(a); the Consumer Credit Act 1974 s 170(1); the Sex Discrimination Act 1975 s 62(1) (substituted by the Race Relations Act 1976 s 79(4), Sch 4 para 3); the Safety of Sports Grounds Act 1975 s 13(a); the Guard Dogs Act 1975 s 5(2)(a); the Race Relations Act 1976 s 53(1); the Radioactive Substances Act 1993 s 46(a).

5 As to the distinction between express and implied enactments see PARA 1234 ante.

6 See eg *Rickless v United Artists Corpn* [1988] QB 40, [1987] 1 All ER 679, CA. As to construction by reference to the mischief see PARA 1474 post.

7 See PARAS 1354-1355 ante.

8 As to the nature of sanctions and remedies see PARA 1353 ante.

9 Where a particular sanction or remedy is expressly laid down by the enactment this suggests, under the *expressio unius* principle, that no other sanction or remedy (whether civil or criminal) was intended: see *Stevens v Evans* (1761) 2 Burr 1152 at 1157; *Doe d Bishop of Rochester v Bridges* (1831) 1 B & Ad 847 at 859; *Stevens v Jeacocke* (1848) 11 QB 731; *Marshall v Nicholls* (1852) 18 QB 882 at 888; *London School Board v Wright* (1884) 12 QBD 578, CA; *R v Hall* [1891] 1 QB 747; *Institute of Patent Agents v Lockwood* [1894] AC 347, HL; *Pasmore v Oswaldtwistle UDC* [1898] AC 387, HL; *Badham v Lambs Ltd* [1946] KB 45, [1945] 2 All ER 295; *Wilkinson v Barking Corpn* [1948] 1 KB 721 at 724, [1948] 1 All ER 564 at 567, CA; *Cutler v Wandsworth Stadium Ltd* [1949] AC 398 at 407, [1949] 1 All ER 544 at 548, HL; *Newman v Francis* [1953] 1 WLR 402; *Southwark London Borough Council v Williams* [1971] Ch 734 at 743, [1971] 2 All ER 175 at 178, CA, per Lord Denning MR; *Thornton v Kirklees Metropolitan Borough Council* [1979] QB 626 at 643, [1979] 2 All ER 349 at 357-358, CA, per Roskill LJ; *Meade v Haringey London Borough Council* [1979] ICR 494 at 512, [1979] 2 All ER 1016 at 1031, CA, per Sir Stanley Rees; *Lonrho Ltd v Shell Petroleum Co Ltd (No 2)* [1982] AC 173 at 185, [1981] 2 All ER 456 at 461, HL, per Lord Diplock. As to the *expressio unius* principle see PARA 1494 post.

10 See *Doe d Bishop of Rochester v Bridges* (1831) 1 B & Ad 847 at 859; *Stevens v Jeacocke* (1848) 11 QB 731 at 741; *Atkinson v Newcastle & Gateshead Waterworks Co* (1877) 2 Ex D 441; *Wake v Sheffield Corpn*

(1884) 12 QBD 142 at 145; *R v County Court Judge of Essex* (1887) 18 QBD 704 at 707; *Clegg Parkinson & Co v Earby Gas Co* [1896] 1 QB 592 at 595; *Barraclough v Brown* [1897] AC 615; *Phillips v Britannia Hygienic Laundry Co* [1923] 2 KB 832 at 841, CA; *Witham Outfall Board v Boston Corpn* (1926) 136 LT 756, CA; *Monk v Warbey* [1935] 1 KB 75 at 84, CA; *Wilkinson v Barking Corpn* [1948] 1 KB 721 at 724, [1948] 1 All ER 564 at 567, CA; *Lonrho Ltd v Shell Petroleum Co Ltd (No 2)* [1982] AC 173 at 185, [1981] 2 All ER 456 at 461, HL, per Lord Diplock; *Thomas v National Union of Mineworkers (South Wales Area)* [1986] Ch 20, [1985] 2 All ER 1; *Scally v Southern Health and Social Services Board* [1992] 1 AC 294, [1991] 4 All ER 563, HL; *Wentworth v Wiltshire County Council* [1993] QB 654, [1993] 2 All ER 265, CA.

11 As to this class see *Buxton v North-Eastern Rly Co* (1868) LR 3 QB 549; *Monk v Warbey* [1935] 1 KB 75 at 85; *Square v Model Farm Dairies (Bournemouth) Ltd* [1939] 2 KB 365, [1939] 1 All ER 259, CA; *Thornton v Kirklees Metropolitan Borough Council* [1979] QB 626, [1979] 2 All ER 349, CA; *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58 at 158-161; sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733 at 739-742, HL, per Lord Bridge; *E (a minor) v Dorset County Council* [1994] 3 WLR 853 at 866, CA; on appeal sub nom *X (minors) v Bedfordshire County Council, M (a minor) v Newham London Borough Council, E (a minor) v Dorset County Council* [1995] 3 All ER 353, [1995] 3 WLR 152, HL.

12 As to the occurrences contemplated see *Gorris v Scott* (1874) LR 9 Ex 125; *Cutler v Wandsworth Stadium Ltd* [1949] AC 398, [1949] 1 All ER 544, HL; *Newman v Francis* [1953] 1 WLR 402; *Grant v National Coal Board* [1956] AC 649, [1956] 1 All ER 683, HL; *Ex p Island Records Ltd* [1978] Ch 122, [1978] 3 All ER 824, CA; *Lonrho Ltd v Shell Petroleum Co Ltd (No 2)* [1982] AC 173 at 186, [1981] 2 All ER 456 at 462, HL; *RCA Corpn v Pollard* [1983] Ch 135, [1982] 3 All ER 771, CA; *Peabody Donation Fund Governors v Parkinson (Sir Lindsay) and Co Ltd* [1985] AC 210, [1984] 3 All ER 529, HL; *West Wiltshire District Council v Garland* [1993] Ch 409, [1993] 4 All ER 246.

13 As to the kind of damage see *Pickering v Liverpool Daily Post and Echo Newspapers plc* [1991] 2 AC 370 at 420, [1991] 1 All ER 622 at 632, HL, per Lord Bridge (there must be 'loss or injury of a kind for which the law awards damages', which must be 'either personal injury, injury to property or economic loss'). This however overlooks such cases as *Ashby v White* (1703) 2 Ld Raym 938 where a remedy was implied when a returning officer wrongfully refused to accept the plaintiff's vote at an election (see also *Ferguson v Earl of Kinnoull* (1842) 9 Cl & Fin 251 (right to have case heard)). If Parliament did not intend to give a civil remedy for breach of the statutory duty, the fact that the person bound acted maliciously will not in itself create a remedy: *Davis v Bromley Corpn* [1908] 1 KB 170 at 172, CA.

14 *Building and Civil Engineering Holidays Scheme Management Ltd v Post Office* [1966] 1 QB 247, [1965] 1 All ER 163, CA. See generally TORT.

15 The principle is *ubi jus, ibi remedium* (where there is a right, the law provides a remedy): *Weale v West Middlesex Waterworks Co* (1820) 1 Jac & W 358 at 371. See also *Ashby v White* (1703) 2 Ld Raym 938; *Doe d Bishop of Rochester v Bridges* (1831) 1 B & Ad 847 at 859; *Wolverhampton New Waterworks Co v Hawkesford* (1859) 6 CBNS 336 at 356; *Fotherby v Metropolitan Rly Co* (1866) LR 2 CP 188 at 194; *Ross v Rugge-Price* (1876) 1 Ex D 269; *Booth v Trail* (1883) 12 QBD 8; *Devonport Corpn v Plymouth, Devonport and District Tramways Co* (1884) 52 LT 161 at 164, CA; *Pasmore v Oswaldtwistle UDC* [1898] AC 387, HL; *Groves v Lord Wimborne* [1898] 2 QB 402, CA; *Nicholls v Ely Beet Sugar Factory* [1936] Ch 343, CA; *Square v Model Farm Dairies (Bournemouth) Ltd* [1939] 2 KB 365 at 375, [1939] 1 All ER 259 at 265-266, CA; *Cutler v Wandsworth Stadium Ltd* [1949] AC 398 at 407, [1949] 1 All ER 544 at 548, HL; *A-G v St Ives RDC* [1960] 1 QB 312 at 324, [1959] 3 All ER 371 at 377 (affd on another point [1961] 1 QB 366, [1961] 1 All ER 265, CA); *Reffell v Surrey County Council* [1964] 1 All ER 743, [1964] 1 WLR 358 (duty of education authority to maintain school premises to prescribed standards); *Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223 at 267, [1970] 1 All ER 1009 at 1017, CA, per Lord Denning MR; *Booth & Co (International) Ltd v National Enterprise Board* [1978] 3 All ER 624; *Thornton v Kirklees Metropolitan Borough Council* [1979] QB 626, [1979] 2 All ER 349, CA (duty of housing authority to provide accommodation for homeless persons). As to recovery of money due under statute see PARA 1362 post.

16 See PARA 1353 et seq ante.

17 See *Great Northern Fishing Co v Edgehill* (1883) 11 QBD 225; *O'Flaherty v M'Dowell* (1857) 6 HL Cas 142 at 157; *Glossop v Heston and Isleworth Local Board* (1879) 12 ChD 102, CA; *Robinson v Workington Corpn* [1897] 1 QB 619, CA; *Read v Croydon Corpn* [1938] 4 All ER 631; but cf *Crystal Palace Gas Co v Idris & Co* (1900) 82 LT 200.

18 *Henderson v Sherborne* (1837) 2 M & W 236 at 239; *A-G v Lockwood* (1842) 9 M & W 378 at 391; *Youle v Mappin* (1861) 30 LJMC 234 at 237. Cf *Robinson v Emerson* (1866) 4 H & C 352 at 355. The presumption may be displaced by express words: *Sims v Pay* (1889) 16 Cox CC 609. In *United States of America Government v Jennings* [1983] 1 AC 624 at 643; sub nom *Jennings v United States Government* [1982] 3 All ER 104 at 116, HL, Lord Roskill warned that the old cases on implied repeal should be applied with caution in relation to modern criminal statutes where the practice is to include express repeals of superseded rules of law. As to implied repeals generally see PARA 1299 et seq ante.

19 *Michell v Brown* (1858) 1 E & E 267 at 274 per Lord Campbell CJ; *Whitehead v Smithers* (1877) 2 CPD 553 at 557; *Fortescue v St Matthew, Bethnal Green, Vestry* [1891] 2 QB 170, DC; *Smith v Benabo* [1937] 1 KB 518 at 525, [1937] 1 All ER 523 at 527, DC. See also *R v Worcestershire Justices* (1816) 5 M & S 457, where a right of appeal was limited; *Steward v Greaves* (1842) 10 M & W 711, where the common law right of a creditor to sue individual members of a banking corporation was held to be displaced by a statutory provision that the public officer of the company should be sued.

20 *Doe d Bishop of Rochester v Bridges* (1831) 1 B & Ad 847 at 859; *Stevens v Jeacocke* (1848) 11 QB 731 at 741; *Marshall v Nicholls* (1852) 18 QB 882 at 888; *Institute of Patent Agents v Lockwood* [1894] AC 347, HL; *Saunders v Holborn District Board of Works* [1895] 1 QB 64, DC; *Clegg, Parkinson & Co v Earby Gas Co* [1896] 1 QB 592 at 595; *Barracrough v Brown* [1897] AC 615, HL; *Stuckey v Hooke* [1906] 2 KB 20, CA. As to ouster of the court's jurisdiction see PARA 1349 ante.

21 *Waghorn v Collison* (1922) 91 LJB 735 at 736, CA, per Bankes LJ; *Meade v Haringey London Borough Council* [1979] ICR 494 at 513-514, [1979] 2 All ER 1016 at 1032, CA, per Sir Stanley Rees; *Lonrho Ltd v Shell Petroleum Co Ltd (No 2)* [1982] AC 173 at 185, [1981] 2 All ER 456 at 461, HL, per Lord Diplock.

22 See eg *Cutler v Wandsworth Stadium Ltd* [1949] AC 398, [1949] 1 All ER 544, HL (no remedy other than criminal penalty); *Meade v Haringey London Borough Council* [1979] ICR 494, [1979] 2 All ER 1016, CA (private action not excluded by remedy of complaint to the Secretary of State); *Lonrho Ltd v Shell Petroleum Co Ltd (No 2)* [1982] AC 173, [1981] 2 All ER 456, HL (no remedy other than criminal penalty); *Calveley v Chief Constable of the Merseyside Police* [1989] AC 1228, [1989] 1 All ER 1025, HL (judicial review, not a claim in damages, the relevant remedy). See also *Collinson v Newcastle and Darlington Rly Co* (1844) 1 Car & Kir 546; *Lichfield Corpn v Simpson* (1845) 8 QB 65; *Great Northern Rly Co v Kennedy* (1849) 4 Exch 417.

The Education Act 1944 s 99 (as amended), which enables an individual to complain to the Secretary of State that an education authority has failed to discharge one of its statutory duties, has been held to preclude proceedings in respect of non-feasance (see *Bradbury v London Borough of Enfield* [1967] 3 All ER 434, [1967] 1 WLR 1311, CA) unless such non-feasance results in injury (*Reffell v Surrey County Council* [1964] 1 All ER 743, [1964] 1 WLR 358), but does not exclude other remedies where the authority has committed an act of malfeasance by eg positively resolving to bring education in its schools to a standstill (see *Meade v Haringey London Borough Council* [1979] ICR 494, [1979] 2 All ER 1016, CA). As to the powers of the Secretary of State on the default of a local education authority see EDUCATION vol 15(1) (2006 Reissue) PARA 58.

23 *Pickering v James* (1873) LR 8 CP 489; *Valance v Falle* (1884) 13 QBD 109 at 110, DC; *Stubbs v Martin* [1895] 2 IR 70 (Ir CA); *Groves v Lord Wimborne* [1898] 2 QB 402, CA; *Bentley v Manchester, Sheffield and Lancashire Rly Co* [1891] 3 Ch 222; *Pasmore v Oswaldtwistle UDC* [1898] AC 387 at 397, HL; *West Ham Corpn v Sharp* [1907] 1 KB 445; *Morris and Bastert Ltd v Loughborough Corpn* [1908] 1 KB 205, CA; *Waghorn v Collison* (1922) 91 LJB 735, CA; *Phillips v Britannia Hygienic Laundry Co Ltd* [1923] 2 KB 832 at 841, CA; *Monk v Warbey* [1935] 1 KB 75, CA; *Solomons v R Gertzenstein Ltd* [1954] 2 QB 243, [1954] 2 All ER 625, CA; *Duchess of Argyll v Duke of Argyll* [1967] Ch 302, [1965] 1 All ER 611; *Meade v Haringey London Borough Council* [1979] ICR 494, [1979] 2 All ER 1016, CA. See also *Lonrho Ltd v Shell Petroleum Co Ltd (No 2)* [1982] AC 173 at 185-186, [1981] 2 All ER 456 at 461-462, HL, per Lord Diplock; *RCA Corpn v Pollard* [1983] Ch 135, [1982] 3 All ER 771, CA. Cf *Warner Bros Records Inc v Parr* [1982] 2 All ER 455, [1982] 1 WLR 993; BUILDING. As to actions for breach of statutory duty see TORT.

24 *Pulsford v Devenish* [1903] 2 Ch 625.

25 It is usually six years (Limitation Act 1980 s 2), but in personal injury actions, three years from the relevant time (see s 11). See further LIMITATION PERIODS vol 68 (2008) PARAS 952, 998 et seq.

26 See LIMITATION PERIODS vol 68 (2008) PARA 985. Where the defendants in an action for breach of statutory duty show that part of the injury suffered by the plaintiff was suffered outside the limitation period but cannot show exactly what part was so suffered and it is clear that a material part was suffered within the period, the plaintiff can recover in full: *Clarkson v Modern Foundries Ltd* [1958] 1 All ER 33, [1957] 1 WLR 1210. Time runs from the date the damage occurs, not the date of discovery: *Pirelli General Cable Works Ltd v Oscar Faber & Partners* [1983] 2 AC 1, [1983] 1 All ER 65, HL; *Murphy v Brentwood District Council* [1991] 1 AC 398, [1990] 2 All ER 908, HL. See further NEGLIGENCE vol 78 (2010) PARA 4. See also LIMITATION PERIODS vol 68 (2008) PARA 921. The issue of a writ for negligence is not sufficient to stop time running in relation to a right of action for breach of statutory duty, as the causes of action are distinct: *Scampton v Colhoun* [1959] NI 106. See also HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 419. As to the limitation period in relation to the recovery of money see PARA 1362 post.

27 See eg the Law of Property Act 1969 s 25(5) (amended by the Limitation Act 1980 s 40(2), Sch 3 para 9); and the Local Government, Planning and Land Act 1980 s 113(10). See also *Central Electricity Board v Halifax Corpn* [1963] AC 785, [1962] 3 All ER 915, HL, where the date of accrual of a claim to funds of an electricity undertaking was transferred on nationalisation to the electricity board. As to privatisation of the electricity supply industry see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1034 et seq.

## UPDATE

### 1360 Tort of breach of statutory duty

NOTE 3--Resale Prices Act 1976 repealed: Competition Act 1998 s 1(c), Sch 14 Pt I..

NOTE 4--Consumer Credit Act 1974 s 170 amended: Enterprise Act 2002 Sch 25 para 6(35).

NOTE 11--*X (Minors) v Bedfordshire CC*, cited, applied in *Bowden v South West Water Services Ltd* [1998] 3 CMLR 330 (no right of action in tort under Water Industry Act 1991 or Water Resources Act 1991 which created comprehensive regulatory regimes enforceable in public rather than private law).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(ii) Sanctions and Remedies for Breach of Statutory Duty/1361. Breach of statutory duty and negligence.

### 1361. Breach of statutory duty and negligence.

The tort of breach of statutory duty has a relationship to the tort of negligence, and the same act may amount to the commission of both torts<sup>1</sup>, though the incidents of the two torts are not necessarily the same<sup>2</sup>.

It may be that, by an anomalous development of case law, negligent contravention of a statute gives rise to liability for the tort of negligence as distinct from the tort of breach of statutory duty<sup>3</sup>.

It may constitute negligence at common law if a person who is under a statutory duty contravenes a duty of care arising otherwise than under the statute (that is at common law), where the statutory provisions are merely part of the setting giving rise to the common law duty<sup>4</sup>. The courts have drawn a distinction between 'policy discretion' conferred by statute and 'operational powers' so conferred. The latter involve the carrying out, rather than the taking, of policy decisions. If they are carried out negligently then a person suffering damage will be entitled to recover by suing in negligence<sup>5</sup>.

A criminal breach of a statutory duty may be used as evidence of negligence in a civil action in some cases where a duty to take care exists otherwise than by virtue of the Act, for example on a highway<sup>6</sup>, or operating a railway<sup>7</sup>. Such a breach may also shift the burden of proof<sup>8</sup> and exclude the defence of *volenti non fit injuria*<sup>9</sup>.

1 This may arise either because the enactment expressly imposes a duty to exercise reasonable care (see eg the Occupiers' Liability Act 1957 s 2) or because a duty of care is implied.

2 In *Caswell v Powell Duffryn Associated Collieries Ltd* [1940] AC 152 at 168, [1939] 3 All ER 722 at 732, HL, Lord Macmillan stated as a general proposition that 'if the plaintiff can show that there has been a breach of the statute he has established the existence of negligence'. However there is no certainty that Parliament intended to require the presence of negligence to establish breach of statutory duty: the statutory requirement may impose strict liability. In the absence of any indication that a foreseeability test is being imposed by the enactment in question, such a test is not to be taken as applied: see *Larner v British Steel plc* [1993] ICR 551 at 562, [1993] 4 All ER 102 at 112, CA, per Peter Gibson J ('It would ... seem wrong to me to imply a requirement of foreseeability, as the result will frequently be to limit success in a claim for breach of statutory duty to circumstances where the workman will also succeed in a parallel claim for negligence; thus it reduces the utility of the section') [ie the Factories Act 1961 s 29 (repealed) (duty to provide a safe place of work)]. Cf *Hammond v*

*Vestry of St Pancras* (1874) LR 9 CP 316 at 322 per Brett LJ ('It would seem to me to be contrary to natural justice to say that Parliament intended to impose upon a public body a liability for a thing which no reasonable care or skill could obviate. The duty may notwithstanding be absolute: but, if so, it ought to be imposed in the clearest possible terms').

3 The basis of this liability appears to be the suggestion that the mere existence of a statutory duty raises a duty of care of the kind postulated by the tort of negligence (cf note 2 supra), and that this is apart from, and additional to, the duty to comply directly with the requirements of the statute. The alleged liability has been recognised in a long line of authorities culminating in *Murphy v Brentwood District Council* [1991] 1 AC 398, [1990] 2 All ER 908, HL, where the House of Lords restricted its scope by overruling its own previous decision in *Anns v Merton London Borough Council* [1978] AC 728, [1977] 2 All ER 492, HL. In consequence, if it exists at all the liability is now probably limited to injury to the person or to health. Cf *Caparo Industries plc v Dickman* [1990] 2 AC 605 at 617, [1990] 1 All ER 568 at 573, HL; *Larner v British Steel plc* [1993] ICR 551, [1993] 4 All ER 102, CA.

4 See eg *Stovin v Wise (Norfolk County Council, third party)* [1994] 3 All ER 467, [1993] 1 WLR 1124, CA.

5 See *Lonrho plc v Tebbit* [1991] 4 All ER 973; on appeal [1992] 4 All ER 280, CA.

6 See eg *Clarke v Brims* [1947] KB 497, [1947] 1 All ER 242, where there was a failure to carry a rear light on a car when required by statute, and it was held that there was no cause of action for the breach of statutory duty which was a public duty only, any prima facie case of negligence at common law arising from the breach being displaced by the evidence in the case. As to negligence on the highway see generally NEGLIGENCE vol 78 (2010) PARA 51 et seq. As to the abolition of the former statutory presumption of fault on the part of a ship disobeying collision regulations see SHIPPING AND MARITIME LAW vol 94 PARA 789.

7 *North Eastern Rly Co Directors etc v Wanless* (1874) LR 7 HL 12; *Woods v Caledonian Rly Co* (1886) 23 Sc LR 798; *Williams v Great Western Rly Co* (1874) LR 9 Exch 157 (gates open at level crossing where the relevant Act enjoined they should be closed); *Blamires v Lancashire and Yorkshire Rly Co* (1873) LR 8 Exch 283 (duty to provide communication with guard). See also *Thomas v British Railways, Board* [1976] QB 912 at 923, [1976] 3 All ER 15 at 20, CA, per Lord Denning MR (content of common law duty in negligence was analogous to the co-existing statutory duty); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 363. As to reference to statutory safety regulations for the purpose of determining a duty at common law in circumstances falling outside the regulations see TORT.

8 *David v Britannic Merthyr Coal Co* [1909] 2 KB 146, CA; affd [1910] AC 74, HL. The effect of the Civil Evidence Act 1968 s 11 (as amended) is that proof in civil proceedings that the defendant has been convicted for an offence involving negligence casts on the defendant the burden of disproving negligence in relation to that incident: *Wauchope v Mordecai* [1970] 1 All ER 417, [1970] 1 WLR 317, CA. See also CIVIL PROCEDURE vol 12 (2009) PARA 1208.

9 *Baddeley v Earl of Granville* (1887) 19 QBD 423. As to the volenti principle see PARA 1446 post. As to this defence in a civil action for breach of statutory duty see TORT.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(ii) Sanctions and Remedies for Breach of Statutory Duty/1362. Money due under an Act.

### 1362. Money due under an Act.

Where an Act imposes an obligation on a person to pay to another a sum of money, the amount due can be recovered by action as a debt if no other remedy is provided by the Act and no provision to the contrary is contained in it<sup>1</sup>. In general, an action to recover any sum recoverable by virtue of any enactment cannot be brought after the expiration of six years from the date on which the cause of action accrued<sup>2</sup>.

<sup>1</sup> *Shepherd v Hills* (1855) 11 Exch 55; *Lloyd v Burrup* (1868) LR 4 Exch 63; *Richardson v Willis* (1872) LR 8 Exch 69; *Booth v Trail* (1883) 12 QBD 8 at 10.



<sup>2</sup> Limitation Act 1980 s 9(1). A two-year period applies if contribution under the Civil Liability (Contribution) Act 1978 is being claimed: see the Limitation Act 1980 s 10. Certain sums recoverable under statute are declared to be recoverable as simple contract debts: see eg the Land Registration Act 1925 s 83(11) (amended by the Limitation Act 1980 s 40(2), Sch 3 para 1). In such cases a six-year period applies: see the Limitation Act 1980 s 5. In other cases, the sum due is stated to be a specialty debt: see eg the Companies Act 1985 s 14(2); and see PARA 1206 ante. In such cases a 12-year period applies: see the Limitation Act 1980 s 8. See also LIMITATION PERIODS vol 68 (2008) PARAS 975-978.

## UPDATE

### 1362 Money due under an Act

NOTE 2--Land Registration Act 1925 replaced by Land Registration Act 2002: see LAND REGISTRATION.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(4) FUNCTIONS OF THE COURT/(ii) Sanctions and Remedies for Breach of Statutory Duty/1363. Duplication of sanctions and remedies.

### 1363. Duplication of sanctions and remedies.

Where a statutory remedy is given for a particular breach of duty for which there is already an existing remedy, these remedies may co-exist<sup>1</sup>. Where an act or omission constitutes an offence under two or more Acts<sup>2</sup>, whenever passed, or both under an Act and at common law, then, unless the contrary intention appears, the offender is liable to be prosecuted and punished under either or any of those Acts or at common law, but is not liable to be punished more than once for the same offence<sup>3</sup>. An individual who has a civil remedy under two or more Acts<sup>4</sup>, or under an Act and at common law<sup>5</sup>, must elect to pursue one only of these remedies<sup>6</sup>.

A general declaration in an Act that certain things were unlawful, followed by provisions creating specific offences, has been held not itself to create a substantive offence<sup>7</sup>.

<sup>1</sup> *R v Robinson* (1759) 2 Burr 800 at 803 per Lord Mansfield CJ; *Wolverhampton New Waterworks Co v Hawkesford* (1859) 6 CBNS 336; *R v Hall* [1891] 1 QB 747 at 753 per Charles J; *Crystal Palace Gas Co v Idris & Co* (1900) 82 LT 200; *Stevens v Chown* [1901] 1 Ch 894; *Nicholls v Ely Beet Sugar Factory* [1936] Ch 343, CA. See also *Sharp v Warren* (1818) 6 Price 131; *Brockwell v Bullock* (1889) 22 QBD 567, CA; *Great Western Rly Co v Sharman* (1892) 61 LJQB 600; *Waghorn v Collison* (1922) 91 LJBK 735, CA; and see *United States of America Government v Jennings* [1983] 1 AC 624, sub nom *Jennings v United States Government* [1982] 3 All ER 104, HL (reckless driving amounted to manslaughter as well as being a statutory offence).

<sup>2</sup> For the meaning of 'Act' see PARA 1232 note 2 ante.

<sup>3</sup> Interpretation Act 1978 ss 18, 22(1), Sch 2 para 1. See further PARA 1445 post.

<sup>4</sup> *Re Masters, Governors and Trustees of Bedford Charity* (1819) 2 Swan 470 at 518.

<sup>5</sup> See *Wright v London General Omnibus Co* (1877) 2 QBD 271; *Birmingham Corp'n v S Allsopp & Sons Ltd* (1918) 88 LJBK 549.

<sup>6</sup> As to election between remedies see also ESTOPPEL vol 16(2) (Reissue) PARA 962.

<sup>7</sup> See *Sales-Matic Ltd v Hinchliffe* [1959] 3 All ER 401, [1959] 1 WLR 1005, DC (Betting and Lotteries Act 1934 s 21 (repealed and replaced by the Lotteries and Amusement Act 1976 s 1, now amended by the National Lottery etc Act 1993 s 2(2), Sch 1 para 2(1)) did not create any substantive offence); *R v Staincross Justices, ex p Teasdale* [1961] 1 QB 170, [1960] 3 All ER 572, DC (person charged under an enactment which was held not to create a substantive offence but merely to create exemptions from another enactment which created an offence).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(5) MISCELLANEOUS PROVISIONS/1364. Waiver of statutory rights.

## (5) MISCELLANEOUS PROVISIONS

### 1364. Waiver of statutory rights.

Persons for whose benefit statutory duties have been imposed may waive their right to the performance of those duties<sup>1</sup>, unless to do so would be contrary to public policy<sup>2</sup> or to the provisions<sup>3</sup> or policy of the Act imposing the particular duty<sup>4</sup>, or the duties are imposed in the public interest<sup>5</sup>. Waiver of this kind may be implied from acquiescence<sup>6</sup>. In some cases, and in particular where an Act bars a legal remedy without extinguishing a right, the courts treat mere failure to plead the Act as acquiescence<sup>7</sup>.

A statutory right which is granted as a privilege may be waived either altogether or in a particular case<sup>8</sup>, and, where an individual for whose benefit such a right is granted waives it, it is not competent to another person who is not intended to be benefited to insist on its performance<sup>9</sup>.

1 Waiver of this kind is based on consent: see generally EQUITY vol 16(2) (Reissue) PARAS 907-908. The ruling principle is *quilibet potest renunciare juri pro se introducto* (a person may renounce a right introduced for his benefit): see *Graham v Ingleby*(1848) 1 Exch 651 at 657; *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd*[1971] AC 850, [1970] 2 All ER 871, HL (waiver of statutory time-limit). Cf *Lowe v Lombank Ltd*[1960] 1 All ER 611, [1960] 1 WLR 196, CA, where it was held that the hirer was not estopped by the terms of a hire purchase agreement from relying on a condition as to fitness implied in it by statute. As to the nature of a statutory duty see PARA 1322 ante. See further Bennion, *Statutory Interpretation* (2nd Edn, 1992) ss 11-12.

2 *Equitable Life Assurance Society of the United States v Reed*[1914] AC 587, PC. See also *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd*[1971] AC 850 at 860, [1970] 2 All ER 871 at 875, HL, per Lord Reid, and at 877 and 890 per Lord Pearson.

3 For examples of cases in which contracting out is expressly prohibited see PARA 1365 post; and see eg CONTRACT vol 9(1) (Reissue) PARA 868.

4 *Bowmaker Ltd v Tabor*[1941] 2 KB 1 at 6, [1941] 2 All ER 72 at 76, CA. See also *Hunt v Hunt* (1862) 31 LJ Ch 161 at 175.

5 *Goldsmid v Great Eastern Rly Co*(1883) 25 ChD 511 at 553, CA; *Edward Ramia Ltd v African Woods Ltd*[1960] 1 All ER 627, [1960] 1 WLR 86, PC.

6 *Davis v Bryan* (1827) 6 B & C 651. As to the effect of acquiescence see generally EQUITY vol 16(2) (Reissue) PARAS 909 (acquiescence operating by way of estoppel), 912 (acquiescence as an element in laches).

7 Thus Acts of limitation or enactments rendering a contract unenforceable unless evidenced in writing must be specially pleaded.

8 *Goldsmid v Great Eastern Rly Co*(1883) 25 ChD 511 at 536, CA (on appeal sub nom *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927 at 936, HL); *Hampstead Corpn v Midland Rly Co*[1905] 1 KB 538, CA; *Toronto Corpn v Russell*[1908] AC 493 at 500, PC; *Stylo Shoes Ltd v Prices Tailors Ltd*[1960] Ch 396 at 406, [1959] 3 All ER 901 at 906. There must be full knowledge of the privilege waived: *Chapman v Michaelson*[1908] 2 Ch 612; see EQUITY vol 16(2) (Reissue) PARA 908. As to a person who is protected from liability on his promise by Act waiving that protection and binding himself by a fresh promise see CONTRACT vol 9(1) (Reissue) PARA 739.

9 *Hebblethwaite v Hebblethwaite*(1869) LR 2 P & D 29 (privilege of witness from liability to be asked or duty to answer certain questions).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(5) MISCELLANEOUS PROVISIONS/1365. Restrictions on contracting-out.

### **1365. Restrictions on contracting-out.**

Certain agreements which would involve the deprivation of statutory rights are by statute expressly rendered void or ineffective<sup>1</sup>. Examples are:

- (1) an agreement for the payment of interest, rent or other annual payment in full without allowing any authorised deduction of tax<sup>2</sup>;
- (2) an agreement purporting to divest a tenant occupier of land of his right to kill ground game<sup>3</sup>;
- (3) a stipulation by which a lessee is deprived of his right to apply for relief against forfeiture for breach of covenant<sup>4</sup>;
- (4) an agreement excluding the statutory rights of a tenant of business premises to compensation on termination of the tenancy or to security of tenure<sup>5</sup>;
- (5) an agreement excluding the statutory provisions relating to security of tenure of a tenant of residential property under a long lease<sup>6</sup>;
- (6) a contract by a tenant for life of settled land not to exercise any of his statutory powers<sup>7</sup>; and
- (7) a stipulation purporting to exclude or limit an employee's rights under employment protection legislation<sup>8</sup>.

Other examples of such statutory restrictions on contracting-out are dealt with elsewhere in this work.

1 In certain of the instances mentioned in the text, any agreement of the type in question is declared to be void (see the Taxes Management Act 1970 s 106(2) (cited in note 2 *infra*)), while in other instances it is provided that the statutory provision conferring a right is to have effect notwithstanding any stipulation to the contrary (see eg the Law of Property Act 1925 s 146(12) (cited in note 4 *infra*)). See further Bennion, *Statutory Interpretation* (2nd Edn, 1992) ss 11-12.

2 See the Taxes Management Act 1970 s 106(2); and INCOME TAXATION vol 23(1) (Reissue) PARA 505.

3 See the Ground Game Act 1880 s 3; the Ground Game (Amendment) Act 1906 s 3; and ANIMALS vol 2 (2008) PARAS 772, 774.

4 See the Law of Property Act 1925 s 146(12); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 619. Section 146 (as amended) does not, however, apply to a lease or tenancy of land granted by the Secretary of State for the purposes of a contract under the Criminal Justice Act 1991 s 84 (as substituted) (contracting out of parts of prisons etc) or under the Criminal Justice and Public Order Act 1994 s 7 (contracting out of secure training centres): see the Criminal Justice Act 1991 s 84(3)(b) (substituted by the Criminal Justice and Public Order Act 1994 s 96); and see the Criminal Justice and Public Order Act 1994 s 7(3)(b).

5 See the Landlord and Tenant Act 1927 s 9; the Landlord and Tenant Act 1954 s 38(1) (as amended), ss 38(2), 49; and LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARAS 709, 789 respectively.

6 See *ibid* s 17; and LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 1199.

7 See the Settled Land Act 1925 s 104(2); and SETTLEMENTS vol 42 (Reissue) PARA 777.

8 See the Employment Protection (Consolidation) Act 1978 s 140(1); and EMPLOYMENT vol 39 (2009) PARA 124.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(5) MISCELLANEOUS PROVISIONS/1366. Estoppel.

### **1366. Estoppel.**

Estoppel cannot operate to prevent or hinder the performance of a positive statutory duty<sup>1</sup>, or the exercise of a statutory discretion which is intended to be performed or exercised for the benefit of the public or a section of the public<sup>2</sup>.

1 See ESTOPPEL vol 16(2) (Reissue) PARA 960. As to the nature of a statutory duty see PARA 1322 ante.

2 *Southend-on-Sea Corp v Hodgson (Wickford) Ltd* [1962] 1 QB 416, [1961] 2 All ER 46, DC (local planning authority); *Essex County Council v Ministry of Housing and Local Government* (1967) 111 Sol Jo 635, 66 LGR 23 (the minister); *Western Fish Products Ltd v Penwith District Council* [1981] 2 All ER 204, 77 LGR 185, CA (local planning authority); *Rootkin v Kent County Council* [1981] 2 All ER 227, [1981] 1 WLR 1186, CA (education authority). The last two cases indicate that a local authority may be estopped in certain circumstances from (1) revoking a decision taken by one of its officers under delegated authority; or (2) enforcing procedural formalities which it has waived. See also LOCAL GOVERNMENT vol 69 (2009) PARA 460.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(5) MISCELLANEOUS PROVISIONS/1367. Relationship of Acts to contracts.

### **1367. Relationship of Acts to contracts.**

There are various ways in which a contract may be affected by an Act in force at the time of its making. The Act may render the contract (1) merely unenforceable<sup>1</sup>; or (2) void, that is to say of no legal effect whatsoever<sup>2</sup>; or (3) both void and illegal, in which case the general rule is that the contract itself is a nullity and that collateral transactions are also vitiated<sup>3</sup>.

By virtue of the presumption that enactments relating to matters of substance are not intended to operate retrospectively, an Act declaring void, or prohibiting, a particular type of contract will be taken in the absence of a clear indication to the contrary as applicable only to contracts entered into after its commencement<sup>4</sup>. The statutory prohibition of a particular act may, however, have the effect of rendering illegal the performance of an existing contract<sup>5</sup>; and in that event, or in the event of performance becoming impossible as the result of a supervening Act, the contract will be discharged unless it was the intention of the parties to create an absolute obligation<sup>6</sup>. It follows that a covenant not to do a lawful act is overridden by a subsequent provision compelling its performance<sup>7</sup>.

Where a contract is confirmed by an Act<sup>8</sup>, no objection can be taken as to its validity<sup>9</sup>. It cannot, for example, be challenged for uncertainty or remoteness<sup>10</sup>; nor is it material that it creates a right which could not be created by ordinary contract<sup>11</sup>. It does not follow that, because it is confirmed by an Act, a contract has the force and effect of an Act<sup>12</sup>, but the terms in which it is confirmed may show that Parliament intended it to operate as a substantive enactment as if the contract had become part of the Act<sup>13</sup>, and it will have such an operation if the Act in question, in addition to confirming the contract, expressly requires it to be carried into execution<sup>14</sup>. A contract having substantive effect in this way may accordingly affect persons who are not parties to it<sup>15</sup>.

1 The effect of failure to comply with a statutory requirement as to writing sometimes renders a contract merely unenforceable: see eg the Statute of Frauds (1677) s 4 (repealed); the Law of Property Act 1925 s 40

(repealed). In other circumstances, the effect is to render the contract void: see eg the Law of Property (Miscellaneous Provisions) Act 1989 s 2 (which avoids a contract for the sale or other disposition of land which is not made in writing); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 79.

2 See CONTRACT vol 9(1) (Reissue) PARA 868. As to the extent to which it is permissible to contract out of rights conferred by Act, and for instances in which contracting out is expressly prohibited, see PARA 1365 ante; and CONTRACT vol 9(1) (Reissue) PARA 868. An Act may prohibit the making of a particular contract without rendering it unenforceable: see eg the Road Traffic Act 1988 s 75 (as originally enacted) which prohibited the sale of a motor vehicle not complying with statutory regulations as to construction, weight and equipment and created a criminal offence, but expressly reserved the validity of any contract of sale: see s 75(8) (as originally enacted). Section 75 is now amended, and s 75(8) repealed, by the Road Traffic Act 1988 ss 16, 83, Sch 8.

3 See generally CONTRACT vol 9(1) (Reissue) PARA 836 et seq. As to illegality in relation to building contracts see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARAS 110-111.

4 As to the presumption against retrospection see PARA 1283 et seq ante. As to the effect on contracts of the repeal of an invalidating Act see PARA 1296 et seq ante.

5 As to the effect of penal Acts on contracts generally see CONTRACT vol 9(1) (Reissue) PARA 869 et seq.

6 See CONTRACT vol 9(1) (Reissue) PARA 902.

7 *Brewster v Kitchell* (1698) as reported in 1 Ld Raym 317 at 321; *Wynn v Shropshire Union Rlys and Canal Co* (1850) 5 Exch 420 at 440.

8 Examples are working agreements made between railway companies in the nineteenth century which would otherwise have been invalid but were confirmed by statute and declared to be valid and binding on the parties to them: see the cases cited in notes 9, 11, 14 infra; and *Jonas v St Dunstan's Overseers* (1908) 98 LT 691 at 696, CA.

9 Where an Act declares an agreement to be valid, its effect is not merely to give the parties capacity to enter into an agreement which would otherwise be ultra vires or invalid, but to make the agreement itself valid: see *Manchester Ship Canal Co v Manchester Racecourse Co* [1900] 2 Ch 352 at 359; affd [1901] 2 Ch 37, CA. The contract is normally scheduled to the Act, but this is not essential. The intention to confirm must, however, be clear, and a mere reference in an Act to the existence of an agreement does not necessarily amount to a confirmation of it: see *Kent Coast Rly Co v London, Chatham, and Dover Rly Co* (1868) 3 Ch App 656.

10 *Manchester Ship Canal Co v Manchester Racecourse Co* [1900] 2 Ch 352 at 359; affd [1901] 2 Ch 37, CA.

11 *Sevenoaks, Maidstone and Tunbridge Rly Co v London, Chatham and Dover Rly Co* (1879) 11 ChD 625 at 635, CA.

12 *R v Midland Rly Co* (1887) 19 QBD 540.

13 See eg *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1960] AC 260, [1959] 3 All ER 1, HL, a case where the contract did not bind the parties until it was confirmed.

14 *Caledonian Rly Co v Greenock and Wemyss Bay Rly Co* (1874) LR 2 Sc & Div 347, HL; *Re Earl Wilton's Settled Estates* [1907] 1 Ch 50.

15 *Re Earl of Wilton's Settled Estates* [1907] 1 Ch 50, where an agreement by a tenant for life of settled land which, but for the Act confirming it, would have amounted to a breach of trust was held to be binding on all persons interested in the land even though they were not parties to the agreement. Where the contract is not given statutory force, it seems that third persons have no greater rights under it than if it had not been confirmed: see *D Davis & Sons Ltd v Taff Vale Rly Co* [1895] AC 542 at 552-553, HL; *Corbett v South Eastern and Chatham Railways Managing Committee* [1906] 2 Ch 12 at 20, CA. As to the doctrine of privity of contract see CONTRACT vol 9(1) (Reissue) PARAS 748-753.

## UPDATE

### 1367 Relationship of Acts to contracts

NOTE 1--While *Yaxley v Gotts* [2000] Ch 162, [2000] 1 All ER 711, CA, held that the doctrine of proprietary estoppel may be used to give effect to a contract which does not comply with the Law of Property (Miscellaneous Provisions) Act 1989 s 2, this

proposition has been doubted in *Yeoman's Row Management Ltd v Cobbe* [2008] UKHL 55, [2008] 4 All ER 713; see further SALE OF LAND vol 42 (Reissue) PARA 29.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/4. OPERATION OF ACTS/(5) MISCELLANEOUS PROVISIONS/1368. Welsh language provisions.

### **1368. Welsh language provisions.**

The Welsh Language Act 1993 provides<sup>1</sup> that where an Act of Parliament:

- (1) confers, or gives power by statutory instrument to confer, a name on any body (other than a local authority), office or place the appropriate minister<sup>2</sup> (in the former case) or the person exercising the power (in the latter case) may confer on it an alternative name in Welsh<sup>3</sup>;
- (2) specifies the form of any document or any form of words which is to be or may be used for an official, public or legal purpose, the appropriate minister may by order<sup>4</sup> prescribe a version of the document in Welsh or partly in Welsh and partly in English, or, as the case may be, a version of the words in Welsh, for use in such circumstances and subject to such conditions as may be prescribed by the order<sup>5</sup>;
- (3) confers a power to specify the form of any document or words which is to be or may be used for an official, public or legal purpose, it includes power to prescribe a version in Welsh, or partly in English and partly in Welsh, for use in such circumstances and subject to such conditions as may be prescribed by the instrument by which the power is exercised<sup>6</sup>.

Anything done in Welsh in a version authorised by these provisions has the same effect as if done in English<sup>7</sup>.

In addition the Welsh Language Act 1993 provides for:

- (a) the use of Welsh in legal proceedings<sup>8</sup>;
- (b) the amendment, so as to provide for the use of the Welsh language, of certain enactments relating to industrial and provident societies<sup>9</sup>, credit unions<sup>10</sup>, companies<sup>11</sup> and registered charities<sup>12</sup>;
- (c) the setting up of a Board (the Welsh Language Board or Bwrdd yr Iaith Gymraeg) having the function of promoting and facilitating the use of the Welsh language<sup>13</sup>; and
- (d) the preparation by public bodies of schemes giving effect to the principle that in the conduct of public business and administration in Wales the English and Welsh languages should be treated on a basis of equality<sup>14</sup>.

1 With limited exceptions, the Welsh Language Act 1993 came into force on 21 December 1993: s 36.

2 'The appropriate minister', in relation to any Act, means (1) in the case of provisions for the execution of which in Wales a minister other than the Secretary of State is responsible, that minister; and (2) in any other case, the Secretary of State: *ibid* s 27(4). Any question arising under s 27(4) must be determined by the Treasury; and 'minister' includes the Treasury, the Board of Trade, the Commissioners of Customs and Excise and the Commissioners of Inland Revenue: s 27(5).

3 *Ibid* s 25(1)-(3). In the former case the power is exercisable by order made by statutory instrument, which must be laid before Parliament after being made: s 27(3).

4 The power to make an order is exercisable by statutory instrument, which must be laid before Parliament after being made: *ibid* s 27(3). See further note 6 *infra*.

5 *Ibid* s 26(1), (2).

6 *Ibid* s 26(3). Where the powers conferred by s 26 are exercised in relation to the form of a document or a form of words, a reference in an Act or instrument to the form is to be construed, so far as may be necessary, as, or as including, a reference to the form prescribed under or by virtue of s 26: s 26(4). Section 26 does not apply in relation to a provision which confers, or gives power to confer, a name on any body, office or place or requires specified words to be included in the name of any body, office or place: s 26(5). For examples of orders made partly under the powers conferred by s 26 see the Non-Domestic Rating (Demand Notices) (Wales) (Amendment) Regulations 1994, SI 1994/415; the Companies (Welsh Language Forms and Documents) (Amendment) Regulations 1995, SI 1995/734 (amended by SI 1995/1508); the Companies (Welsh Language Forms and Documents) (No 3) Regulations 1995, SI 1995/1508; the Registration of Births and Deaths (Welsh Language) (Amendment) Regulations 1995, SI 1995/818; and the Elections (Welsh Forms) Order 1995, SI 1995/830. A number of orders made under the corresponding provisions of the Welsh Language Act 1967 (ie s 2 (repealed)) remain in force by virtue of the Interpretation Act 1978 s 17(2)(b); see eg the Registration of Marriages (Welsh Language) Regulations 1986, SI 1986/1445; the European Parliamentary Elections (Welsh Forms) Order 1989, SI 1989/428 and the Representation of the People (Welsh Forms) Order 1989, SI 1989/429 (both amended by SI 1995/830); and the Local Elections (Declaration of Acceptance of Office) (Welsh Forms) Order 1991, SI 1991/1169.

7 Welsh Language Act 1993 s 27(1).

8 See *ibid* ss 22-24.

9 See *ibid* s 28.

10 See *ibid* s 29.

11 See *ibid* ss 30, 31.

12 See *ibid* ss 32, 33.

13 See *ibid* Pt I (ss 1-4), Sch 1.

14 See *ibid* Pt II (ss 5-21).

## UPDATE

### 1368 Welsh language provisions

NOTES--As to the transfer of functions to the National Assembly for Wales see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672.

NOTE 6--SI 1995/830 replaced: Local Elections (Principal Areas) (Welsh Forms) Order 2007, SI 2007/1015. SI 2005/1105. SI 1986/1445 replaced: Registration of Marriages (Welsh Language) Regulations 1999, SI 1999/1621. SI 1989/428 replaced: see now European Parliamentary Elections (Welsh Forms) Order 2009, SI 2009/781. SI 1989/429 now replaced by Parliamentary Elections (Welsh Forms) Order 2007, SI 2007/1014. SI 1991/1169 replaced: Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004, SI 2004/1508.

NOTE 14--Welsh Language Act 1993 s 6 amended: School Standards and Framework Act 1998 Sch 30 para 50; Fire and Rescue Services Act 2004 Sch 1 para 84; National Health Service (Consequential Provisions) Act 2006 Sch 1 para 164; SI 2005/3238; and SI 2007/961.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(1) ROLE OF THE COURT/1369. Role of court in interpretation.

## 5. STATUTORY INTERPRETATION

### (1) ROLE OF THE COURT

#### 1369. Role of court in interpretation.

The court has the function of authoritatively construing legislation<sup>1</sup>, that is, determining its legal meaning<sup>2</sup> so far as is necessary to decide a case before it<sup>3</sup>. This function is exclusive to the court, and a meaning found by any other person, for example an authorising agency<sup>4</sup>, an investigating agency<sup>5</sup>, an executing agency<sup>6</sup>, a prosecuting agency<sup>7</sup>, or even Parliament itself, except when intending to declare or amend the law<sup>8</sup>, is always subject to the determination of the court<sup>9</sup>.

It is usually said that the making of law, as opposed to its interpretation, is a matter for the legislature, and not for the courts<sup>10</sup>, but, in so far as Parliament does not convey its intention clearly, expressly and completely, it is taken to require the court to spell out that intention where necessary. This may be done either by finding and declaring implications in the words used by the legislator<sup>11</sup>, or by regarding the breadth or other obscurity of the express language as conferring a delegated legislative power to elaborate its meaning in accordance with public policy (including legal policy)<sup>12</sup> and the purpose of the legislation<sup>13</sup>. Whichever course is adopted, in accordance with the doctrine of precedent<sup>14</sup> the court's operation influences the future legal meaning of the enactment by producing what may be called sub-rules, which are implied or expressed in the court's judgment<sup>15</sup>.

1 See PARA 1346 ante.

2 As to legal meaning of an enactment see PARA 1373 post.

3 As to the court's duty to implement legislation see PARA 1347 ante; as to reference by the court to practice, opinions of jurists etc see PARA 1351 ante; and as to the doctrine of judicial notice see PARA 1352 ante.

4 See PARA 1327 ante.

5 See PARA 1328 ante.

6 See PARA 1329 ante.

7 See PARA 1345 ante.

8 See PARA 1236 ante.

9 *R v London Transport Executive, ex p Greater London Council*[1983] QB 484 at 490, [1983] 2 All ER 262 at 267, CA, per Kerr LJ. Lord Scarman said 'It has been axiomatic among lawyers and, indeed, in our legal professional thinking for a very long time that the interpretation of statutes is a matter for the judges; it is not a matter for legislation': 405 HL Official Report (5th series) col 276. See also *Home v Earl Camden* (1795) 2 Hy Bl 533 at 536, HL; *Russell v Ledsam* (1845) 14 M & W 574 at 589; *Duport Steels Ltd v Sirs*[1980] 1 All ER 529, [1980] 1 WLR 142, HL; *Chokolingo v A-G of Trinidad and Tobago*[1981] 1 All ER 244 at 248, [1981] 1 WLR 106 at 110, PC, per Lord Diplock.

10 *River Wear Comrs v Adamson*(1877) 2 App Cas 743 at 764, HL, per Lord Blackburn; *Bristol Guardians v Bristol Waterworks Co*[1914] AC 379 at 387, HL, per Lord Loreburn; *Cape Brandy Syndicate v IRC*[1921] 2 KB 403 at 414, CA, per Lord Sterndale MR; *Ormond Investment Co v Betts*[1928] AC 143 at 156, HL, per Lord Buckmaster; *Magor and St Mellons RDC v Newport Corp*[1952] AC 189, [1951] 2 All ER 839, HL; *Jacobs v Chaudhuri*[1968] 2 QB 470 at 491, [1968] 2 All ER 124 at 131, CA, per Winn LJ; *Dockers' Labour Club v Race Relations Board*[1976] AC 285 at 299, [1974] 3 All ER 592 at 600, HL, per Lord Simon of Glaisdale; *Stock v Frank Jones (Tipton) Ltd*[1978] 1 All ER 948, [1978] 1 WLR 231, HL; *NWL Ltd v Woods*[1979] 3 All ER 614 at 632, [1979] 1 WLR 1294 at 1314, HL, per Lord Scarman ('Judicial decision cannot impose limitations on the language



of Parliament where it is clear from the words, context and policy of the statute that no limitation was intended').

11 As to implied enactments see PARA 1234 ante.

12 As to delegated legislative powers see PARA 1340 ante.

13 As to purposive construction see PARA 1475 post.

14 See PARA 1350 ante.

15 See *Earl of Waterford's Claim* (1832) 6 Cl & Fin 133 at 172 per Lord Cottenham LC; *Vane v Yiannopoulos* [1965] AC 486 at 498, [1964] 3 All ER 820 at 824, CA, per Lord Reid ('One might have expected to find in the Licensing Acts some provisions regulating the position in the common case of a licence holder being absent from the licensed premises during the permitted hours, but there appears to be none. So, if the courts have in effect legislated to fill the gap, I think we should leave matters as they are'); *Pittalis v Grant* [1989] QB 605 at 618, [1989] 2 All ER 622, CA, per Nourse LJ. See also Bennion, *Statutory Interpretation* (2nd Edn, 1992) s 26.

## UPDATE

### 1369 Role of court in interpretation

TEXT AND NOTES--So far as it is possible to do so, primary and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights within the meaning of the Human Rights Act 1998: see ss 1, 3; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 104A.1, 104A.2.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(1) ROLE OF THE COURT/1370. Evidence of meaning of words.

### 1370. Evidence of meaning of words.

Evidence may not be adduced of the meaning of terms of which the court takes judicial notice<sup>1</sup> but is admissible as respects the meaning of other terms<sup>2</sup>.

1 *Marquis of Camden v IRC* [1914] 1 KB 641 at 650, CA; *London and North Eastern Ry Co v Berriman* [1946] AC 278 at 305, [1945] 1 All ER 255 at 266, HL; *R v Calder and Boyars Ltd* [1969] 1 QB 151, [1968] 3 All ER 644, CA; *R v Anderson* [1972] 1 QB 304, [1971] 3 All ER 1152, CA; *R v Stamford* [1972] 2 QB 391, [1972] 2 All ER 427, CA. As to terms of which the court takes judicial notice see PARA 1352 ante.

2 See eg *Prophet v Platt Bros & Co Ltd* [1961] 2 All ER 644, [1961] 1 WLR 1130 (fettling of metal castings); *Blankley v Godley* [1952] 1 All ER 436n (aircraft 'taking off'); *London and North Eastern Ry Co v Berriman* [1946] AC 278, [1946] 1 All ER 255 (repairing of permanent way).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(1) ROLE OF THE COURT/1371. Reference to dictionaries etc.

### 1371. Reference to dictionaries etc.

To ascertain the meaning of a term used in legislation recourse may be had to a dictionary or other work of reference<sup>1</sup>. This applies even though judicial notice<sup>2</sup> is taken of the meaning of the term<sup>3</sup>. A dictionary cited should be 'well-known and authoritative'<sup>4</sup>. The court nevertheless remains free to reach its own conclusion, which may be different to that expressed in a work of reference<sup>5</sup>.

1 *Taylor v Smetten* (1883) 11 QBD 207 at 210, DC; *R v Peters* (1886) 16 QBD 636 at 641; *Read v Bishop of Lincoln* [1892] AC 644 at 652-653, PC, per Lord Halsbury LC; *Marquis of Camden v IRC* [1914] 1 KB 641 at 648, CA; *Re Ripon (Highfield) Housing Order 1938*, *White and Collins v Minister of Health* [1939] 2 KB 838, [1939] 3 All ER 548, CA; *McVittie v Bolton Corp* [1945] 1 KB 281, [1945] 1 All ER 379, CA; *R v Bates* [1952] 2 All ER 842 at 845-846; *Goodhew v Morton* [1962] 2 All ER 771, [1962] 1 WLR 210, DC; *Hardwick Game Farm v Suffolk Agricultural and Poultry Producers Assocn Ltd* [1966] 1 All ER 309 at 323, [1966] 1 WLR 287 at 310, CA, per Davies LJ (affd sub nom *Henry Kendall & Sons v William Lillico & Sons Ltd* [1969] 2 AC 31, [1968] 2 All ER 444, HL). Books by Mill and Stephen were cited on the question of what offences were 'of a political character' within the meaning of the Extradition Act 1870 s 3(1) (repealed: see now the Extradition Act 1989 s 6): *Re Castioni* [1891] 1 QB 149, DC. Cf *Bank of Toronto v Lambe* (1887) 12 App Cas 575 at 581, PC (works on political economy cited as to meaning of 'direct taxation' in the British North America Act 1867); *R v Bouch* [1983] QB 246 at 251, [1982] 3 All ER 918 at 921-922, CA (*Encyclopaedia Britannica* cited as to definition of 'explosive substance' in the Explosive Substances Act 1883 s 3(1) (as substituted and amended)). See also CIVIL PROCEDURE vol 11 (2009) PARA 944.

2 As to the doctrine of judicial notice see PARA 1352 ante.

3 'Judicial notice is not confined to questions which everyone would be able to answer from his own knowledge. It includes matters of a public nature such as history, social custom and public opinion, which may have to be culled from works of reference': *Stoke-on-Trent City Council v B & Q plc* [1991] Ch 48 at 65, [1991] 4 All ER 221 at 231 per Hoffmann J.

4 *Marquis of Camden v IRC* [1914] 1 KB 641 at 647, CA, per Cozens-Hardy MR. An English dictionary published in a foreign country may be an unreliable guide: see *Hardwick Game Farm v Suffolk Agricultural and Poultry Producers Assocn Ltd* [1966] 1 All ER 309 at 323, [1966] 1 WLR 287 at 310, CA (citation, on the meaning of 'poultry', of a dictionary published in the United States of America).

5 This particularly applies to words used in an enactment which have been the subject of judicial interpretation, whether or not that interpretation is binding on the court in question: see *Midland Rly Co and Kettering, Thrapston and Huntingdon Rly Co v Robinson* (1889) 15 App Cas 19 at 34, HL; *Kerr v Kennedy* [1942] 1 KB 409 at 413; *Edwards (Inspector of Taxes) v Clinch* [1981] 3 All ER 543 at 545, [1981] 3 WLR 707 at 710, HL, per Lord Wilberforce. The use of dictionaries etc to ascertain the ordinary meaning of words is to be distinguished from reference to legal textbooks as authorities on the construction of those words as used in a particular statute: see PARA 1351 ante. See also *Customs and Excise Comrs v Top Ten Promotions Ltd* [1969] 3 All ER 39 at 90, [1969] 1 WLR 1163 at 1171, HL, per Lord Upjohn; *Central Press Photos Ltd v Department of Employment and Productivity* [1970] 3 All ER 775 at 782, 9 KIR 55, CA.

## UPDATE

### 1371 Reference to dictionaries etc

NOTE 1--1989 Act repealed: Extradition Act 2003 Sch 4.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(2) LEGISLATIVE INTENTION AND THE LEGAL MEANING/1372. Ascertaining the legislator's intention.

## (2) LEGISLATIVE INTENTION AND THE LEGAL MEANING

### 1372. Ascertaining the legislator's intention.

The object of all interpretation of a written instrument is to discover the intention of its author as expressed in the instrument<sup>1</sup>. Therefore the object in construing an Act is to ascertain the intention of Parliament<sup>2</sup> as expressed in the Act, considering it as a whole and in its context, and acting on behalf of the people<sup>3</sup>. The meaning of an enactment that corresponds to this intention is known as its legal meaning<sup>4</sup>. The legal meaning may or may not correspond to the grammatical or literal meaning<sup>5</sup>.

<sup>1</sup> As to the interpretation of written instruments see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 165.

<sup>2</sup> *Viscountess Rhondda's Claim*[1922] 2 AC 339 at 397, HL. See also *Harrison v Lewis* [1988] 2 FLR 339 at 344, CA, citing with approval the predecessor of this paragraph which set out the law prior to *Pepper (Inspector of Taxes) v Hart*[1993] AC 593, [1993] 1 All ER 42, HL (cited in PARA 1421 post).

<sup>3</sup> *Heydon's Case* (1584) 3 Co Rep 7a at 7b; *Eastman Photographic Materials Co Ltd v Comptroller-General of Patents, Designs and Trade Marks*[1898] AC 571 at 575, HL per Lord Halsbury LC; *Magor and St Mellons RDC v Newport Corp*[1952] AC 189 at 191, [1951] 2 All ER 839 at 841, HL; *A-G for Canada v Hallett & Carey Ltd*[1952] AC 427 at 449, [1952] 1 TLR 1408 at 1417, PC, per Lord Radcliff; *Re Newspaper Proprietors' Agreement* (1963) LR 4 RP 361 at 388, [1964] 1 All ER 55 at 59, HL, per Lord Evershed; *Corocraft Ltd v Pan-American Airways* [1969] 1 QB 616 at 638, [1968] 2 All ER 1059 at 1071, per Donaldson MR; *McEldowney v Forde*[1971] AC 632, [1969] 2 All ER 1039, HL; *Kennedy v Spratt*[1972] AC 83, [1971] 1 All ER 805, HL; *Maunsel v Olins*[1975] 1 All ER 16 at 19, [1974] 3 WLR 835 at 838, HL, per Viscount Dilhorne; *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG*[1975] AC 591, [1975] 1 All ER 810, HL; *Daymond v South West Water Authority*[1976] AC 609, [1976] 1 All ER 39, HL; *Farrell v Alexander*[1977] AC 59, [1976] 2 All ER 721, HL; *NWL Ltd v Woods*[1979] 3 All ER 614 at 630, [1979] 1 WLR 1294 at 1311, HL, per Lord Scarman; *A-G's Reference (No 1 of 1981)*[1982] QB 848 at 856, [1982] 2 All ER 417 at 422, CA, per Lord Lane CJ.

<sup>4</sup> 'In essence drafting, enactment and interpretation are integral parts of the process of translating the volition of the electorate into rules which will bind themselves': *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 at 651, [1975] 1 All ER 810 at 847, HL, per Lord Simon of Glaisdale. As to the nature of legislative intention see further Bennion, *Statutory Interpretation* (2nd Edn, 1992) ss 163-171.

<sup>5</sup> For the meaning of 'enactment' see PARA 1232 ante. As to the nature of the legal meaning see PARA 1373 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(2) LEGISLATIVE INTENTION AND THE LEGAL MEANING/1373. Nature of the legal meaning.

### 1373. Nature of the legal meaning.

The legal meaning of an enactment, that is the meaning that corresponds to the legislator's intention<sup>1</sup>, is the meaning arrived at by applying to the enactment, taken with any other relevant and admissible material, the rules, principles, presumptions and canons which govern statutory interpretation. These may be referred to as the interpretative criteria, or guides to legislative intention<sup>2</sup>.

<sup>1</sup> See PARA 1372 ante.

<sup>2</sup> As to the interpretative criteria see PARA 1375 post. The rule for the court is that 'it is our duty to ascertain the true legal meaning of the words used by the legislature': *A-G v Sillem* (1864) 2 H & C 431 at 513 per Pollock CB.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(2) LEGISLATIVE INTENTION AND THE LEGAL MEANING/1374. Doubt as to the legal meaning.

### **1374. Doubt as to the legal meaning.**

If, on an informed interpretation<sup>1</sup>, there is no real doubt<sup>2</sup> that a particular meaning of an enactment is to be applied<sup>3</sup>, that meaning is to be taken as its legal meaning<sup>4</sup>. If there is a real doubt, it is to be resolved by applying the interpretative criteria<sup>5</sup>.

1 As to the informed interpretation rule see PARA 1414 post.

2 'No form of words has ever yet been framed with regard to which some ingenious counsel could not suggest a difficulty': *Pratt v South Eastern Rly* [1897] 1 QB 718 at 721, DC, per Lord Cave LC. The law recognises a doubt over the meaning of an enactment as 'real' only where it is substantial, and not merely conjectural or fanciful. 'Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to [that] plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral': *Duport Steels v Sirs* [1980] 1 All ER 529 at 541, [1980] 1 WLR 142 at 157, HL, per Lord Diplock. If a judge 'forms his own clear judgment and does not think that the words are 'fairly and equally open to divers meanings' he is not entitled to say that there is an ambiguity': *Kirkness v John Hudson & Co Ltd* [1955] AC 696 at 712, [1955] 2 All ER 345 at 351, HL, per Viscount Simonds. Presumptions such as that in favour of construing penal Acts strictly apply only where 'after full inquiry and consideration one is left in real doubt': *DPP v Ottevell* [1970] AC 642 at 649, [1968] 3 All ER 153 at 157, HL, per Reid LJ. In particular, courts 'must not be over-zealous to search for ambiguities or obscurities in words which on the face of them are plain, simply because the members of the court are out of sympathy with the policy to which the Act appears to give effect': *IRC v Rossminster Ltd* [1980] AC 952 at 1008, [1980] 1 All ER 80 at 90, HL, per Lord Diplock. See also *Akbarali v Brent London Borough Council* [1983] 2 AC 309, sub nom *Shah v Barnet London Borough Council* [1983] 1 All ER 226, HL, per Lord Scarman. It should be noted however that extraneous factors may cause real doubt even where the literal meaning is plain: see PARA 1378 post.

3 Normally this will be the literal meaning: see PARA 1470 post.

4 As to the legal meaning see PARA 1373 ante.

5 As to the interpretative criteria see PARA 1375 et seq post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(3) INTERPRETATIVE CRITERIA AND THE BASIC RULE/1375. Nature of the interpretative criteria.

## **(3) INTERPRETATIVE CRITERIA AND THE BASIC RULE**

### **1375. Nature of the interpretative criteria.**

The interpretative criteria, or guides to legislative intention, which are to be applied in arriving at the legal meaning of an enactment<sup>1</sup> are laid down either by statute or at common law<sup>2</sup>. They consist of (1) rules of construction laid down either by statute or at common law<sup>3</sup>; (2) principles derived by the courts from judicial decisions as to the nature and content of legal policy<sup>4</sup>; (3) presumptions laid down by the courts based on the nature of legislation<sup>5</sup>; and (4) linguistic canons applicable to any passage of prose<sup>6</sup>.

1 See PARA 1373 ante.

2 As to the part played by the common law see *Express Newspapers Ltd v McShane*[1980] AC 672 at 684, [1980] 1 All ER 65 at 70, HL, per Lord Wilberforce ('it is always open to the courts, indeed their duty, with open-ended expressions such as those involving cause, or effect, or remoteness, or, in the context of this very Act [the Trade Union and Labour Relations Act 1974 (repealed)], connection with, to draw a line beyond which the expression ceases to operate. This is simply the common law in action. It does not involve the judges in cutting down what Parliament has given; it does involve them in interpretation in order to ascertain how far Parliament intended to go').

3 See PARA 1380 et seq post.

4 See PARA 1431 et seq post.

5 See PARA 1469 et seq post.

6 See PARA 1483 et seq post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(3) INTERPRETATIVE CRITERIA AND THE BASIC RULE/1376. Basic rule of statutory interpretation.

### **1376. Basic rule of statutory interpretation.**

The basic rule of statutory interpretation has two branches. It is taken to be the legislator's intention (1) that the enactment is to be construed in accordance with the interpretative criteria, which are the general guides to legislative intention laid down by law<sup>1</sup>; and (2) that, where these conflict, the problem is to be resolved by weighing and balancing the factors concerned<sup>2</sup>.

1 *Ralph v Carrick* (1879) 11 ChD 873 at 878 per Cotton LJ. As to the interpretative criteria see PARA 1375 ante.

2 As to this process see PARA 1378 post; and as to the basic functions of the courts in relation to statutes see PARA 1346 et seq ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(3) INTERPRETATIVE CRITERIA AND THE BASIC RULE/1377. Opposing constructions of an enactment.

### **1377. Opposing constructions of an enactment.**

The usual circumstance in which a doubtful enactment falls to be construed is where the respective parties each contend for a different legal meaning<sup>1</sup> of the disputed enactment in its application to the facts of the instant case. These may be referred to as the opposing constructions<sup>2</sup>.

1 As to the legal meaning see PARA 1373 ante.

2 'The courts are concerned with the practical business of deciding a *lis*, and when a plaintiff puts forward one construction of an enactment and the defendant another, it is the court's business in any case of some difficulty, after informing itself of what I have called the legal and factual context ... to consider in the light of

this knowledge whether the enacting words admit of both the rival constructions put forward. If they admit of only one construction, that construction will receive effect, even if it is inconsistent with the preamble, but, if the enacting words are capable of either of the constructions offered by the parties, the construction which fits the preamble may be preferred': *A-G v Prince Ernest Augustus of Hanover* [1957] AC 436 at 467, [1957] 1 All ER 49 at 58, HL, per Lord Normand (as to his reference to 'the enacting words' see PARA 1258 ante). Where the words admit of two constructions, ie are grammatically ambiguous, the matter will be decided by reference to interpretative factors such as the preamble to the Act in question. If they are not ambiguous the choice will be between a literal and a strained construction: see PARA 1475 post. For an example of irreducible ambiguity see the Rent Act 1968 s 18(repealed): '[This] section is certainly one which admits, almost invites, opposing constructions': *Maunsell v Olins* [1975] 1 All ER 16 at 20, [1974] 3 WLR 835 at 840, HL, per Lord Wilberforce.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(3) INTERPRETATIVE CRITERIA AND THE BASIC RULE/1378. Extracting, weighing and balancing the interpretative factors.

### **1378. Extracting, weighing and balancing the interpretative factors.**

When, in the light of the facts of the instant case, a relevant interpretative criterion<sup>1</sup> is applied to the text of the enactment in question it produces a specific guide to the construction of the enactment in that case. This specific guide may be called, in relation to that case, an interpretative factor. When the relevant interpretative factors do not all point one way it is necessary for the court to assess their respective weights and determine which of the opposing constructions, on balance, it favours<sup>2</sup>.

1 As to the interpretative criteria see PARA 1375 ante.

2 'When doubt arises, rules of construction are relied on. They are not rules in the ordinary sense of having some binding force. They are our servants not our masters. They are aids to construction, presumptions or pointers. Not infrequently one 'rule' points in one direction, another in a different direction. In each case we must look at all relevant circumstances, and decide as a matter of judgment what weight to attach to any particular 'rule': *Maunsell v Olins* [1974] 1 All ER 16 at 18, [1974] 3 WLR 835 at 837, HL, per Lord Reid. It is necessary 'to have regard to and weigh in the balance every factor which can be said in any way to point towards or away from [the construction in question]': *Nancollas v Insurance Officer* [1985] 1 All ER 833 at 836, CA per Donaldson MR. See also *A-G's Reference (No 1 of 1988)* [1989] AC 971 at 994, [1989] 2 All ER 1 at 8, HL, per Lord Lowry; and see Lord Denning, *The Due Process of Law* (1980) p 60 ('Let the advocates one after the other put the weights into the scales - the 'nicely calculated less or more' - but the judge at the end decides which way the balance tilts, be it ever so slightly'). See further Bennion, *Statutory Interpretation* (2nd Edn, 1992) Pt X.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(3) INTERPRETATIVE CRITERIA AND THE BASIC RULE/1379. Strict and liberal construction.

### **1379. Strict and liberal construction.**

Where the application of one of the opposing constructions of an enactment<sup>1</sup> would produce an adverse result (that is one detrimental to the subject or the state), that is a factor against that construction<sup>2</sup>, and indicates that the court should curtail the application of the enactment, narrowing its operation and effect, a process known as strict construction<sup>3</sup>. Where the application of one of the opposing constructions of the enactment would produce a beneficent result (that is one beneficial to the subject or the state), that is a factor favouring that construction, and indicates that the court should widen the application of the enactment, a

process known as liberal construction<sup>4</sup>. If the enactment is coercive, a strict construction reduces its coerciveness, as the incidence of its application is reduced. If the enactment is relieving, a liberal construction widens its relieving effect, as the incidence of its application is increased. As is usual in statutory interpretation, the judiciary here observe no uniformity in the use of terms. For example, instead of 'strict' judges may use terms like 'limited' or 'narrow'. Instead of 'liberal' they may say 'wide' or 'beneficial'. What is a strict interpretation of an enactment from one viewpoint may be liberal from another<sup>5</sup>.

Strict and liberal construction are not, therefore, interpretative criteria in themselves<sup>6</sup>. They are rather methods or techniques by which the court applies the interpretative criteria<sup>7</sup>. All enactments are to be construed by the same method, but the result may in some cases yield a strict construction and in others a liberal one.

1 As to the opposing constructions see PARA 1377 ante.

2 As to how interpretative factors are weighed and balanced see PARA 1378 ante.

3 Principles of legal policy such as that favouring the public interest (see PARA 1450 post) and that against doubtful penalisation (see PARA 1456 post) tend to indicate that the court should be ready to narrow the effect of a coercive enactment and widen that of a relieving enactment. Where the interests of the state are concerned, equivalent concepts must be used; eg, the state is interested that justice should be administered correctly, so a strict construction was given to the Evidence (Proceedings in Other Jurisdictions) Act 1975 s 2(4) in order to preclude 'fishing expeditions': *Re Asbestos Insurance Coverage Cases* [1985] 1 All ER 716, [1985] 1 WLR 331, HL.

4 It is said, for instance, to be a principle of statutory interpretation that 'a domestic statute designed to give effect to an international convention should, in general, be given a broad and liberal construction': *Samick Lines Co Ltd v Antonis P Lemos (Owners), The Antonis P Lemos* [1985] AC 771 at 781, [1985] 1 All ER 695 at 703, HL, per Lord Brandon. This dictum should not, however, be taken to preclude the need to consider any other relevant factors in addition to the desirability of conforming to treaty obligations: see PARA 1439 post.

5 See eg *Turton v Turnbull* [1934] 2 KB 197 at 201, CA, per Scrutton LJ ('As by the [Agricultural Holdings] Act [1923] he (the landlord) is being deprived of his common law rights, I think we must construe the Act with some liberality in his favour or scrutinise the tenant's claim with some strictness').

6 As to the interpretative criteria see PARAS 1375 ante, 1380 et seq post.

7 'The distinction between a strict construction and a more free one has, no doubt, in modern times almost disappeared, and the question now is, what is the true construction of the statute?': *A-G v Sillem* (1864) 2 H & C 431 at 509 per Pollock CB.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(i) Rules Laid Down by Acts/A. RULES LAID DOWN BY THE INTERPRETATION ACT 1978/1380. Function of an Interpretation Act.

## **(4) THE INTERPRETATIVE CRITERIA**

### **(i) Rules Laid Down by Acts**

#### **A. RULES LAID DOWN BY THE INTERPRETATION ACT 1978**

##### **1380. Function of an Interpretation Act.**

An Interpretation Act has been called a drafting convenience<sup>1</sup>. Its main functions, achieved by assigning definitions to commonly used terms or concepts<sup>2</sup>, are to shorten the language used in Acts of Parliament and other legislation, to reduce the need for repetition and to aid

consistency of expression<sup>3</sup>. It may also contain other provisions bearing on the legal meaning of enactments<sup>4</sup>.

Whether it is so stated or not, a provision of an Interpretation Act does not apply to an enactment if the contrary intention appears from that enactment; and the Interpretation Act itself will provide that its definitions apply only where no contrary intention appears<sup>5</sup>. Courts and practitioners construing legislation also need to have in mind the current Interpretation Act and any other relevant statutory interpretation provisions<sup>6</sup>.

1 See *Blue Metal Industries Ltd v R W Dilley*[1970] AC 827 at 848, [1969] 3 All ER 437 at 442, PC, per Lord Morris of Borth-y-Gest.

2 See PARA 1382 et seq post.

3 The long title to the first Interpretation Act, known as Lord Brougham's Act 13 & 14 Vict c 21 (1850) was: 'An Act for shortening the Language used in Acts of Parliament'. It was given the popular short title 'the Acts of Parliament Abbreviation Act' (see J E Eardley-Wilmot, *Lord Brougham's Law Reforms* (1860) 117). It was repealed and replaced by the Interpretation Act 1889, which in its turn was repealed and replaced by the Interpretation Act 1978.

4 See eg *ibid* ss 1-4; and PARAS 1258-1259, 1289, 1208, 1279 respectively ante. As to the legal meaning see PARA 1373 ante.

5 See eg *ibid* s 5; and PARA 1382 et seq post. See also *Blue Metal Industries Ltd v R W Dilley*[1970] AC 826 at 847, [1969] 3 All ER 437 at 441, PC, per Lord Morris of Borth-y-Gest (draftsmen of New South Wales companies legislation could 'prima facie... be assumed' to have had in mind the provision of the Interpretation Act 1897 (NSW) by which, unless the contrary appeared, words in the singular included the plural and vice versa). Cf the Interpretation Act 1978 s 6(c); and PARA 1388 post.

6 Modern Acts frequently contain their own definitions and other interpretation provisions, which supplement or displace those in the Interpretation Act 1978: see eg the definition of 'land' in the Town and Country Planning Act 1990 s 336(1) (differing from that in the Interpretation Act 1978 s 5, Sch 1: see PARA 1383 post).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(i) Rules Laid Down by Acts/A. RULES LAID DOWN BY THE INTERPRETATION ACT 1978/1381. Legislation to which the Interpretation Act 1978 applies.

### **1381. Legislation to which the Interpretation Act 1978 applies.**

In the Interpretation Act 1978<sup>1</sup>, 'Act' is expressed to include a local and personal or private Act<sup>2</sup>, and 'subordinate legislation' means Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act<sup>3</sup>. In certain cases the meaning assigned applies to an expression only when it is used in an Act, or in subordinate legislation, passed or made after a certain date or between certain dates<sup>4</sup>. In other cases the meaning applies whenever the Act was passed or subordinate legislation made<sup>5</sup>. The Interpretation Act 1978 applies to Measures of the General Synod of the Church of England as it applies to Acts<sup>6</sup>.

1 As to the functions of an Interpretation Act see PARA 1380 ante.

2 Interpretation Act 1978 s 21(1). As to these types of Act see PARA 1211 et seq ante. 'Act' also includes a public general Act: see s 21(1); and PARA 1210 ante.



3 Ibid s 21(1). 'Subordinate legislation' does not include instruments made under the royal prerogative. As to these types of legislation see PARA 1500 et seq post.

4 Ibid ss 22(1), 23(1), Sch 2 paras 4(1)(a), (2), (3), 5, 7; and PARA 1382 et seq post.

5 See ibid Sch 2 paras 4(1)(b), 6; and PARA 1382 et seq post.

6 Ibid s 22(3). The Interpretation Act 1978 also applies, so far as it relates to Acts before its commencement (ie before 1 January 1979: s 26) (see the text and note 4 supra) to Measures of the Church Assembly passed after 28 May 1925: s 22(3). As to Measures see further PARA 1205 note 5 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(i) Rules Laid Down by Acts/A. RULES LAID DOWN BY THE INTERPRETATION ACT 1978/1382. Definitions relating to persons.

### 1382. Definitions relating to persons.

In Acts passed or subordinate legislation made after 1889, 'person' includes a body of persons corporate or unincorporate<sup>1</sup>. In any Act a reference to the Sovereign who reigned at the time the Act was passed is to be construed as a reference to the Sovereign for the time being<sup>2</sup>. The Interpretation Act 1978 also defines 'Lord Chancellor'<sup>3</sup>, 'Secretary of State'<sup>4</sup>, 'Governor-General'<sup>5</sup>, 'Governor'<sup>6</sup>, 'Comptroller and Auditor General'<sup>7</sup>, 'consular officer'<sup>8</sup>, and 'registered medical practitioner'<sup>9</sup>.

In relation to England and Wales, in Acts passed or subordinate legislation made after 4 April 1988, references (1) however expressed, to any relationship between two persons; (2) to a person whose father and mother were or were not married to each other at the time of his birth; and (3) cognate with references falling within head (2) above, are to be construed in accordance with the Family Law Reform Act 1987<sup>10</sup>.

1 Interpretation Act 1978 ss 5, 22(1), 23(1), Sch 1, Sch 2 para 4(1)(a). See also PARA 1381 ante (application to Measures). Where it includes bodies corporate, the definition applies to any provision of an Act, whenever passed, relating to an offence punishable on indictment or on summary conviction: Sch 2 para 4(5). See generally *R v Gardner* (1774) 1 Cowp 79; *R v York Corpn* (1837) 6 Ad & El 419; *R v Beverley Lighting Comrs* (1837) 6 Ad & El 645; *Newcastle Corpn v A-G* (1845) 12 Cl & Fin 402, HL; *O' Shanassy v Joachim* (1876) 1 App Cas 82, PC; *St Leonard's, Shoreditch, Guardians v Franklin* (1878) 3 CPD 377; *Pharmaceutical Society v London and Provincial Supply Assocn Ltd* (1880) 5 App Cas 857 at 862, HL; *Re Jeffcock's Trusts* (1882) 51 LJ Ch 507; *Enniskillen Union Guardians v Hilliard* (1884) 14 LR Ir 214; *St Helens Tramways Co v Wood* (1891) 56 JP 71, DC; *Hirst v West Riding Union Banking Co* [1901] 2 KB 560, CA; *Pearks, Gunston and Tee Ltd v Ward, Hennen v Southern Counties Dairies Co* [1902] 2 KB 1; *Wills v Tozer* (1904) 20 TLR 700; *Chuter v Freeth & Pocock Ltd* [1911] 2 KB 832, DC; *Mousell Bros Ltd v London and North-Western Rly Co* [1917] 2 KB 836 at 842-843, DC; *Edwards v A-G for Canada* [1930] AC 124, PC; *Law Society v United Service Bureau Ltd* [1934] 1 KB 343, DC; *Davey v Shawcroft* [1948] 1 All ER 827, DC.

As to who is a 'person aggrieved' see in particular *R v London Quarter Sessions, ex p Westminster Corpn* [1951] 2 KB 508 at 510, [1951] 1 All ER 1032 at 1033, DC (borough council not a 'person aggrieved'); overruled by *Cook v Southend Borough Council* [1990] 2 QB 1, [1990] 1 All ER 243, CA. As to decisions since *R v London Quarter Sessions, ex p Westminster Corpn* supra but prior to *Cook v Southend Borough Council* supra see *R v Dorset Quarter Sessions Appeals Committee, ex p Weymouth Corpn* [1960] 2 QB 230 at 239-241, [1960] 2 All ER 410 at 411-413, DC. See also, for a case decided on a pre-1889 statute, *Penn-Texas Corpn v Murat Anstalt* [1964] 1 QB 40, [1963] 1 All ER 258, CA; and see *National and Grindlays Bank v Kentiles Ltd and Official Receiver* [1966] 1 WLR 348, PC (limitation of 'person' in one context does not impose the same meaning in another); *Rolloswin Investments Ltd v Chromolit Portugal Cutelarias e Produtos Metálicos SARL* [1970] 2 All ER 673, [1970] 1 WLR 912 ('person' in the Sunday Observance Act 1677 (repealed) did not include a limited company as a company is incapable of public worship); *Applin v Race Relations Board* [1975] AC 259 at 290, [1974] 2 All ER 73 at 92, HL, per Lord Simon of Glaisdale (pronoun 'him' does not exclude references to bodies corporate); *Floor v Davis* [1980] AC 695, [1978] 2 All ER 677, HL; and see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1226.

2 Interpretation Act 1978 s 10. As to the death of the Sovereign see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 'Lord Chancellor' means the Lord High Chancellor of Great Britain: *ibid* Sch 1, Sch 2 para 4(1)(b). See also PARA 1381 ante. This definition does not apply to Acts passed before 1 October 1921 in which the term was used in relation to Ireland only: Sch 2 para 4(4). As to the office of Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

4 'Secretary of State' means one of her Majesty's Principal Secretaries of State: *ibid* Sch 1, Sch 2 para 4(1)(b). As to the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

5 In Acts passed or subordinate legislation made after 1889, 'Governor-General' includes any person who for the time being has the powers of the Governor-General: *ibid* Sch 1, Sch 2 para 4(1)(a). As to the powers of a Governor-General see eg COMMONWEALTH vol 13 (2009) PARA 736 (Governor-General of Australia).

6 In Acts passed or subordinate legislation made after 1889, 'Governor', in relation to any British possession, includes the officer for the time being administering the government of that possession: *ibid* Sch 1, Sch 2 para 4(1)(a). As to the office of Governor see COMMONWEALTH vol 13 (2009) PARAS 814-821.

7 'Comptroller and Auditor General', in any Act whenever passed or subordinate legislation whenever made, means the Comptroller General of the receipt and issue of Her Majesty's Exchequer and Auditor General of Public Accounts appointed in pursuance of the Exchequer and Audit Departments Act 1866: Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b). As to the office of Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

8 'Consular officer' means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions: see *ibid* Sch 1, Sch 2 para 4(1)(b), applying the Consular Relations Act 1968 s 1, Sch 1 art 1(1)(a), which sets out the definition contained in the Vienna Convention on Consular Relations (Vienna, 24 April 1963; TS 14 (1973); Cmnd 5219) art 1(1)(a).

9 'Registered medical practitioner' means a fully registered person within the meaning of the Medical Act 1983 (see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 3): Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(a) (amended by the Medical Act 1983 s 56(1), Sch 5 para 18). 'Registered' in relation to nurses, midwives and health visitors means registered in the register maintained by the United Kingdom Central Council for Nursing, Midwifery and Health Visiting by virtue of their qualifications in nursing, midwifery or health visiting as the case may be: Interpretation Act 1978 Sch 1 (definition added by the Nurses, Midwives and Health Visitors Act 1979 s 23(4), Sch 7 para 30).

The Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(a) also defined various terms in relation to children which were repealed by the Children Act 1989 s 108(7), Sch 15. After 16 November 1989, in relation to England and Wales, for 'parental responsibility' see the Children Act 1989 s 3; for 'contact order' and 'residence order' see s 8(1); for 'section 8 order' see s 8(2); for 'family proceedings' see s 8(3); for 'child who is looked after by a local authority' see s 22; for 'harm' see ss 31(9), 105(1); for 'child', 'child who is in the care of a local authority', 'child of the family', 'guardian of a child' and 'local authority' see s 105(1). Unlike the earlier definitions, however, the definitions given in the Children Act do not have universal application. As to the nature and exercise of parental rights and duties, and the rights and duties of others concerned with the welfare of children, see generally CHILDREN AND YOUNG PERSONS.

10 Interpretation Act 1978 Sch 1 (definition added by the Family Law Reform Act 1987 s 33(1), Sch 2 para 73) applying s 1; Family Law Reform Act 1987 (Commencement No 1) Order 1988, SI 1988/425. This definition is, however, to be disregarded in construing references in the Income and Corporation Taxes Act 1988 to a child or to children, however expressed: see s 831(4).

## UPDATE

### 1382 Definitions relating to persons

NOTE 9--Definition of 'registered' in relation to nurses and midwives amended: SI 2004/1771.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(i) Rules Laid Down by Acts/A. RULES LAID DOWN BY THE INTERPRETATION ACT 1978/1383. Definitions relating to places.

### 1383. Definitions relating to places.

In Acts passed or subordinate legislation made after 1889, 'British Islands' means (subject to an important exception in the case of Acts passed before the commencement of the Interpretation Act 1978) the United Kingdom<sup>1</sup>, the Channel Islands<sup>2</sup> and the Isle of Man<sup>3</sup>. In Acts passed after 1 April 1974, 'England' means the area consisting of certain counties<sup>4</sup> established by the Local Government Act 1972<sup>5</sup>, Greater London and the Isles of Scilly<sup>6</sup>; and 'Wales' means the area consisting of certain other counties<sup>7</sup> established by that Act<sup>8</sup>.

In Acts passed or subordinate legislation made after 1889, 'British possession' means any part of Her Majesty's dominions outside the United Kingdom<sup>9</sup>, and 'colony'<sup>10</sup> means (subject to an important exception in the case of Acts passed before the commencement of the Interpretation Act 1978) any part of Her Majesty's dominions outside the British Islands except (1) countries having fully responsible status within the Commonwealth<sup>11</sup>; (2) territories for whose external relations a country other than the United Kingdom is responsible; and (3) associated states<sup>12</sup>. In an Act passed at any time 'the Communities' means the European Economic Community, the European Coal and Steel Community and the European Atomic Energy Community (now collectively known as 'the European Community'<sup>13</sup>).

In Acts passed or subordinate legislation made on or after 1 January 1979, 'land' includes buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land<sup>14</sup>. The Interpretation Act 1978 also contains definitions of 'London borough' and related expressions<sup>15</sup>, and 'police area' and related expressions<sup>16</sup>.

1 In Acts passed on or after 12 April 1927, 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 ss 5, 22, Sch 1, Sch 2 para 4(1)(a). See also PARA 1381 ante. This definition of 'United Kingdom' applies to subordinate legislation made at any time before 1 January 1979 as it applies to Acts passed at that time: s 23(1), Sch 2 para 6. 'Great Britain' means England, Wales and Scotland: see the Union with Scotland Act 1706 art I; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to whether 'Great Britain' includes the territorial waters adjacent to it see *Earl of Lonsdale v A-G* [1982] 3 All ER 579 at 619-627, [1982] 1 WLR 887 at 936-947 per Slade J.

2 As to the territory included in the Channel Islands see COMMONWEALTH vol 13 (2009) PARA 792.

3 Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(a). In its application to Acts passed after the establishment of the Irish Free State but before the commencement of the Interpretation Act 1978, 'British Islands' includes the Republic of Ireland: Sch 2 para 4(2).

4 For the names of the counties so established see LOCAL GOVERNMENT vol 69 (2009) PARA 24.

5 See the Local Government Act 1972 s 1, Sch 1, Pts I, II.

6 Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(a). This provision is expressed to be subject to any alteration of boundaries made under the Local Government Act 1972 Pt IV (ss 53-78) (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 56 et seq. In any Act passed before 1 April 1974 (when Monmouthshire became part of Wales: see the Local Government Act 1972 s 20, Sch 4 Pts I, II (now substituted by the Local Government of Wales Act 1994 s 1(2), Sch 1, Sch 15 paras 1, 58)) any reference to England includes a reference to Berwick-upon-Tweed and Monmouthshire, and, in any Act passed before the Welsh Language Act 1967 (repealed and replaced by the Welsh Language Act 1993) (ie before 27 July 1967), it includes a reference to Wales: Interpretation Act 1978 Sch 2 para 5(a). This definition of 'England' applies to subordinate legislation made at any time before 1 January 1979 as it applies to Acts passed at that time: s 23(1), Sch 2 para 6.

7 Ie the counties established by the Local Government Act 1972 s 20 Sch 4 Pts I, II (now as substituted: see note 6 supra) (see LOCAL GOVERNMENT vol 69 (2009) PARA 41): Interpretation Act 1978 Sch 1.

8 Ibid Sch 1, Sch 2 para 4(1)(a), which is expressed to be subject to any alteration of boundaries made under the Local Government Act 1972 Pt IV (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 77 et seq. This definition of 'Wales' applies to subordinate legislation made at any time before 1 January 1979 as it applies to Acts passed at that time: Interpretation Act 1978 Sch 2 para 6.

9 Ibid Sch 1, Sch 2 para 4(1)(a). Where parts of such dominions are under both a central and a local legislature, all parts under the central legislature are deemed, for the purposes of this definition, to be one British possession: Sch 1.

10 In its application to an Act passed at any time before the commencement of the Interpretation Act 1978 (ie 1 January 1979: s 26) 'colony' includes (1) any colony within the meaning of the Interpretation Act 1889 s 18(3) (repealed) (ie any part of Her Majesty's dominions exclusive of the British Islands and the former British India, which was excluded, in relation to Acts passed at a later time, by any enactment repealed by the Interpretation Act 1978 (Sch 2 para 4(3)(a)); (2) any country or territory which ceased after that time to be part of Her Majesty's dominions, but subject to a provision for the continuation of existing law as if it had not so ceased (Sch 2 para 4(3)(b)); and head (2) in the text does not apply (Sch 2 para 4(3)).

11 As to the classification of members of the Commonwealth see COMMONWEALTH vol 13 (2009) PARA 709.

12 Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(a). Where parts of such dominions are under both a central and a local legislature, all parts under the central legislature are deemed, for the purposes of this definition, to be one colony: Sch 1. In Acts passed after 1889, 'colonial legislature' and 'legislature' mean the authority, other than the United Kingdom Parliament or Her Majesty in Council, competent to make laws for the possession: Sch 1, Sch 2 para 4(1)(a). As to dependent legislatures see COMMONWEALTH vol 13 (2009) PARA 801 et seq.

13 Ibid Sch 1, Sch 2 para 4(1)(b), applying the European Communities Act 1972 s 1, and also providing that 'the Treaties', 'the Community Treaties' and other expressions defined in s 1, Sch 1 (s 1 as amended) are to have the meanings therein prescribed. Unless the contrary intention appears, the definitions of 'the Communities' and related expressions contained in the Interpretation Act 1978 Sch 1 apply to Northern Ireland legislation as they apply to Acts: s 24(4). See further EUROPEAN COMMUNITIES.

14 Ibid Sch 1, Sch 2 para 4(1)(a). In any Act passed before 1 January 1979 and after 1850, 'land' includes messuages, tenements and hereditaments, houses and buildings of any tenure: Sch 2 para 5(b). In Acts passed after 1889 'Lands Clauses Acts', in relation to England and Wales, means the Lands Clauses Consolidation Act 1845, the Lands Clauses Consolidation Acts Amendment Act 1860 and any Acts for the time being in force amending those Acts: Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(a). In relation to England and Wales, in any Act whenever passed, and in subordinate legislation, 'local land charges register' means a register kept pursuant to the Local Land Charges Act 1975 s 3 (amended by the Local Government (Miscellaneous Provisions) Act 1982 s 34(a); prospectively further amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 49 as from a day to be appointed) (see LAND CHARGES vol 26 (2004 Reissue) PARA 675 et seq) and, in relation to any land or to a local land charge, 'the appropriate local land charges register' means the local land charges register for the area in which the land or, as the case may be, the land affected by the charge, is situated or, if the land is situated in two or more areas for which local land charges registers are kept, each of the local land charges registers kept for those areas: Interpretation Act 1978 Sch 1, Sch 2 paras 4(1)(b), 6 (applying the Local Land Charges Act 1975 s 4 (amended by the Interpretation Act 1978 s 25(1), Sch 3)).

15 'London borough' means a borough described in the London Government Act 1963 s 1, Sch 1 (as amended) subject to any alterations made under the Local Government Act 1972 Pt IV (as amended) or the Local Government Act 1992 Pt II: Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b) (definition amended by the Local Government Act 1992 s 27(1), Sch 3 para 21). These boroughs are either inner or outer London boroughs. 'Inner London borough' means one of the boroughs so described and numbered in the 1963 Act from 1 to 12, and 'outer London borough' means one of the boroughs so described and numbered from 13 to 32: Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b). For the boroughs and their numbers see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 35 et seq. This is expressed to be subject in each case to any alterations in boundaries made under the Local Government Act 1972 Pt IV (as amended) or the Local Government Act 1992 Pt II: Interpretation Act 1978 Sch 1 (definition as so amended).

16 'Police area', 'police authority' and other expressions relating to the police have the meaning or effect described by the Police Act 1964 s 62 (substituted by the Police and Magistrates' Courts Act 1994 s 44, Sch 5 para 15): Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b). A police authority is a 'public body' for the purposes of the Welsh Language Act 1993 Pt II (ss 5-21) (Welsh Language Schemes): Welsh Language Act 1993 s 6(1)(d). See LOCAL GOVERNMENT vol 69 (2009) PARA 605.

## UPDATE

### 1383 Definitions relating to places

NOTE 15--Definition of 'London borough' in 1978 Act Sch 1 further amended: Local Government and Public Involvement in Health Act 2007 Sch 1 para 14.

NOTE 16--1964 Act s 62 now Police Act 1996 s 101(1): 1978 Act Sch 1, amended by the 1996 Act Sch 7 para 32.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(i) Rules Laid Down by Acts/A. RULES LAID DOWN BY THE INTERPRETATION ACT 1978/1384. Definitions relating to institutions and bodies.

### **1384. Definitions relating to institutions and bodies.**

The expression 'the Privy Council' means the Lords and others of Her Majesty's Most Honourable Privy Council<sup>1</sup>. 'The Treasury' means the Commissioners of Her Majesty's Treasury<sup>2</sup>. 'Bank of England' means, as the context requires, the Governor and Company of the Bank of England or the bank of the Governor and Company of the Bank of England<sup>3</sup>. The Interpretation Act 1978 also defines 'National Debt Commissioners'<sup>4</sup>, 'Charity Commissioners'<sup>5</sup>, 'Church Commissioners'<sup>6</sup>, 'Crown Estate Commissioners'<sup>7</sup>, 'sewerage undertaker'<sup>8</sup> and 'water undertaker'<sup>9</sup>.

1 Interpretation Act 1978 ss 5, 22(1), Sch 1, Sch 2 para 4(1)(b). See also PARA 1381 ante. As to the composition of the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 Ibid Sch 1, Sch 2 para 4(1)(b). As to the appointment and functions of the Treasury Commissioners see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 Ibid Sch 1, Sch 2 para 4(1)(b). 'Bank of Ireland' means, as the context requires, the Governor and Company of the Bank of Ireland or the bank of the Governor and Company of the Bank of Ireland: Sch 1, Sch 2 para 4(1)(b). As to the constitution of the Bank of England see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 793, 794.

4 'National Debt Commissioners' means the Commissioners for the Reduction of the National Debt: ibid Sch 1, Sch 2 para 4(1)(b). As to the constitution and functions of the National Debt Commissioners see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1332.

5 'Charity Commissioners' means the Charity Commissioners for England and Wales referred to in the Charities Act 1993 s 1: Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b) (definition amended by the Charities Act 1993 s 98(1), Sch 6 para 15). As to the general function and objects of the Commissioners see CHARITIES vol 8 (2010) PARA 538 et seq.

6 'Church Commissioners' means the commissioners constituted by the Church Commissioners Measure 1947: Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b). As to the functions of the Church Commissioners see ECCLESIASTICAL LAW vol 14 para 361 et seq.

7 'Crown Estate Commissioners' means the commissioners referred to in the Crown Estate Act 1961 s 1: Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b). See further CONSTITUTIONAL LAW AND HUMAN RIGHTS.

8 In relation to England and Wales, 'sewerage undertaker' is to be construed in accordance with the Water Industry Act 1991 s 6: Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b) (definition added by the Water Act 1989 s 190(1), Sch 25 para 55(1), (2); amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 32).

9 In relation to England and Wales, 'water undertaker' is to be construed in accordance with the Water Industry Act 1991 s 6: Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b) (definition substituted for the previous definitions of 'water authority' and 'water authority area' by the Water Act 1989 Sch 25 para 55(1), (3); amended by the Water Consolidation (Consequential Provisions) Act 1991 Sch 1 para 32). See further WATER AND WATERWAYS vol 100 (2009) PARA 137.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(i) Rules Laid Down by Acts/A. RULES LAID DOWN BY THE INTERPRETATION ACT 1978/1385. Definitions concerning raising and provision of money by Parliament.

### **1385. Definitions concerning raising and provision of money by Parliament.**

In Acts passed on or after 12 March 1970 'the Tax Acts' means the Income and Corporation Taxes Act 1970 or, as the case may require, the Income and Corporation Taxes Act 1988, and all other provisions of the Income Tax Acts<sup>1</sup> and the Corporation Tax Acts<sup>2</sup>. In an enactment passed at any time which provides in relation to England and Wales for the payment of costs out of central funds, 'central funds' means money provided by Parliament<sup>3</sup>. In Acts passed after 1889 in relation to matters relating to the Consolidated Fund<sup>4</sup>, the National Loans Fund<sup>5</sup>, or money provided by Parliament<sup>6</sup>, or to the Exchequer or to central taxes or finance, 'financial year' means the 12 months ending with 31 March<sup>7</sup>.

1 The Income and Corporation Taxes Act 1988 consolidated the Income and Corporation Taxes Act 1970. 'The Income Tax Acts' means all enactments relating to income tax, including any provisions of the Corporation Tax Acts (see note 2 infra) which relate to income tax: Interpretation Act 1978 ss 5, 22(1), Sch 1, Sch 2 para 4(1) (b). See also INCOME TAXATION vol 23(1) (Reissue) PARA 21; and see PARA 1381 ante. This definition and the definitions of the Corporation Tax Acts and the Tax Acts apply, unless the contrary intention appears, to Northern Ireland legislation as they apply to Acts: Interpretation Act 1978 s 24(4).

2 Ibid Sch 1, Sch 2 para 4(1)(a). 'The Corporation Tax Acts' means the enactments relating to the taxation of the income and chargeable gains of companies and of company distributions, including provisions relating to income tax: Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(a) (definition substituted by the Finance Act 1987 s 71, Sch 15 para 12). See also note 1 supra; and see INCOME TAXATION vol 23(1) (Reissue) PARA 21.

3 Ibid Sch 1, Sch 2 para 4(1)(b). As to the award of costs in criminal cases see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARAS 2058 et seq.

4 As to the Consolidated Fund see PARLIAMENT vol 78 (2010) PARAS 1028-1031.

5 As to the National Loans Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 727-739.

6 As to public expenditure see PARLIAMENT vol 78 (2010) PARAS 1028-1031.

7 Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(a).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(i) Rules Laid Down by Acts/A. RULES LAID DOWN BY THE INTERPRETATION ACT 1978/1386. Definitions of courts; expressions relating to offences and procedure.

### **1386. Definitions of courts; expressions relating to offences and procedure.**

In relation to England and Wales, 'the Supreme Court' means the Court of Appeal<sup>1</sup> and the High Court<sup>2</sup>, together with the Crown Court<sup>3</sup>. In Acts passed after 1846, in relation to England and Wales, 'county court' means a court held for a district under the County Courts Act 1984<sup>4</sup>. In relation to Acts passed at any time, 'magistrates' court' means any justice or justices of the peace acting under any enactment or by virtue of his or their commission or under the common law<sup>5</sup>.

In Acts passed after 1889, in relation to any court, 'Rules of Court' means rules made by the authority having power to make rules or orders regulating the practice of that court<sup>6</sup>.

Certain expressions relating to offences are defined in relation to England and Wales and apply to Acts passed at any time:

- (1) 'indictable offence' means an offence which, if committed by an adult, is triable on indictment, whether it is exclusively so triable or triable either way;
- (2) 'summary offence' means an offence which, if committed by an adult, is triable only summarily;
- (3) 'offence triable either way' means an offence (other than an offence triable on indictment only by virtue of Part V of the Criminal Justice Act 1988<sup>7</sup>) which, if committed by an adult, is triable either on indictment or summarily; and
- (4) the terms 'indictable', 'summary' and 'triable either way', in their application to offences, are to be construed accordingly<sup>8</sup>.

In relation to fines or penalties for offences, 'the standard scale', with reference to a fine or penalty for an offence triable only summarily, means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982<sup>9</sup>; and 'the statutory maximum' means the prescribed sum<sup>10</sup> within the meaning of the Magistrates' Courts Act 1980<sup>11</sup>.

'Oath' and 'affidavit' include affirmation and declaration<sup>12</sup>, and 'swear' includes affirm and declare<sup>13</sup>.

1 In relation to England and Wales, 'Court of Appeal' means Her Majesty's Court of Appeal in England; and in relation to Northern Ireland, means Her Majesty's Court of Appeal in Northern Ireland: Interpretation Act 1978 ss 5, 22(1), Sch 1, Sch 2 para 4(1)(b). See also PARA 1381 ante.

2 In relation to England and Wales, 'High Court' means Her Majesty's High Court of Justice in England (see COURTS vol 10 (Reissue) PARAS 602-605); and in relation to Northern Ireland, means Her Majesty's High Court of Justice in Northern Ireland: ibid Sch 1, Sch 2 para 4(1)(b). For the constitution and divisions of the High Court in England see the Supreme Court Act 1981 ss 4, 5 (as amended) and s 7; and for the constitution and divisions of the High Court of Justice in Northern Ireland see the Judicature (Northern Ireland) Act 1978 s 2 (as amended) and s 5.

3 Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b). See further COURTS vol 10 (Reissue) PARA 601 et seq. In relation to England and Wales, 'Crown Court' means the Crown Court constituted by the Courts Act 1971 s 4 (repealed) (see now the Supreme Court Act 1981 s 8); and in relation to Northern Ireland, 'Crown Court' means the Crown Court constituted by the Judicature (Northern Ireland) Act 1978 s 4: Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b). As to the jurisdiction of the Crown Court see COURTS vol 10 (Reissue) PARAS 625-630. In relation to Northern Ireland, 'Supreme Court' means the Supreme Court of Judicature of Northern Ireland: Sch 1, Sch 2 para 4(1)(b).

4 Ibid Sch 1, Sch 2 para 4(1)(a) (definition amended by the County Courts Act 1984 s 148(1), Sch 2 para 68). This definition applies to Orders in Council made after 1846: Interpretation Act 1978 s 23(1), Sch 2 para 7. In relation to Northern Ireland, 'county court' means a court held for a division under the County Courts (Northern Ireland) Order 1980, SI 1980/397: Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(a) (definition amended by the County Courts (Northern Ireland) Order 1980 art 68(2), Sch 1 Pt II). As to the jurisdiction of county courts in England and Wales see COURTS.

5 Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b) (definition amended by the Magistrates' Courts Act 1980 s 154(1), Sch 7 para 169(b); applying s 148(1)). In relation to Northern Ireland, 'magistrates' court' has the meaning assigned to it by the Magistrates' Courts (Northern Ireland) Order 1981, SI 1981/1675: Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b) (definition amended by the Magistrates' Courts (Northern Ireland) Order 1981 art 170(2), Sch 6 para 56). As to the jurisdiction of magistrates' courts in England and Wales see MAGISTRATES vol 29(2) (Reissue) PARAS 521-533.

6 Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(a). The power of the authority to make such rules of court includes power to make such rules for the purpose of any Act which directs or authorises anything to be done by rules of court: Sch 1. For the effect of this definition see *A-G for Northern Ireland's Reference (No 1 of 1975)* [1977] AC 105, [1976] 2 All ER 937, HL. See also CIVIL PROCEDURE vol 11 (2009) PARA 24; and COURTS.

7 Ie by virtue of the Criminal Justice Act 1988 Pt V (ss 37-70) (as amended): see generally CRIMINAL LAW, EVIDENCE AND PROCEDURE.

8 Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b) (definition amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 59). In these definitions, references to the way or ways in which an offence is triable are to be construed without regard to the effect, if any, of the Magistrates' Courts Act 1980 s 22 (as amended) on the mode of trial in a particular case: Interpretation Act 1978, Sch 1, Sch 2 para 4(1)(b) (Sch 1 amended for these purposes by the Magistrates' Courts Act 1980 s 154(1), Sch 7 para 169(c)). See also MAGISTRATES vol 29(2) (Reissue) PARA 661. As to the classification of indictable offences, summary offences and offences triable either way see MAGISTRATES vol 29(2) (Reissue) PARA 653; and see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1102 et seq.

The Interpretation Act 1978 Sch 1 also contains a definition of 'committed for trial' which, in Acts passed after 1889 and in relation to England and Wales, means committed in custody or on bail by a magistrates' court pursuant to the Magistrates' Courts Act 1980 s 6 (as amended) (see MAGISTRATES vol 29(2) (Reissue) PARA 676) or by any judge or other authority having power to do so, with a view to trial before a judge and jury: see the Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(a) (definition amended by the Magistrates' Courts Act 1980 s 154(1), Sch 7 para 169(a)). Section 6 (as amended) is prospectively substituted by the Criminal Justice and Public Order Act 1994 s 44(1), (2), Sch 4 Pt I; and this definition is prospectively repealed by ss 44(3), 168(3), Sch 4 Pt II para 28(a), Sch 11 as from a day to be appointed. A new definition of 'transfer for trial' is added by Sch 4 Pt II para 28(b), as from a day to be appointed, as follows: "Transfer for trial' means the transfer of proceedings against an accused to the Crown Court for trial under the Magistrates' Courts Act 1980 s 7 (as substituted)": Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(a) (definition as so added).

9 le as set out in the Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (as so substituted). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 1991 s 18 (substituted by the Criminal Justice Act 1993 s 65); and MAGISTRATES.

10 le the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141. As from 1 October 1992, the prescribed sum is £5,000: s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)).

11 Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b) (definitions added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58).

12 Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b). 'Statutory declaration' means a declaration made by virtue of the Statutory Declarations Act 1835 (see CIVIL PROCEDURE vol 11 (2009) PARA 1024): Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b).

13 Ibid Sch 1, Sch 2 para 4(1)(b).

## UPDATE

### 1386 Definitions of courts; expressions relating to offences and procedure

NOTES 2, 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

TEXT AND NOTE 3--Interpretation Act 1978 Sch 1 amended so that 'Supreme Court' now means the Supreme Court of the United Kingdom; 'Court of Judicature' means the Court of Judicature of Northern Ireland; and 'Senior Courts' means the Senior Courts of England and Wales: Constitutional Reform Act 2005 Sch 11 para 24 (in force on 1 October 2009: SI 2009/1604).

NOTE 9--1991 Act s 18, consolidated in the Powers of Criminal Courts (Sentencing) Act 2000 s 128, repealed: Criminal Justice Act 2003 Sch 37 Pt 7. See now s 162.



Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(i) Rules Laid Down by Acts/A. RULES LAID DOWN BY THE INTERPRETATION ACT 1978/1387. Definitions relating to distance and time.

### **1387. Definitions relating to distance and time.**

For the purposes of any Act passed after 1889, any distance is measured in a straight line on a horizontal plane unless the contrary intention appears<sup>1</sup>. In any Act, whenever passed, 'ordnance map' means a map made under powers conferred by the Ordnance Survey Act 1841 or the Boundary Survey (Ireland) Act 1854<sup>2</sup>.

Unless it is otherwise specifically stated, an expression of time in an Act (whenever passed) is held to be Greenwich mean time<sup>3</sup>. This does not, however, apply during British Summer Time<sup>4</sup>. In any Act passed after 1850, 'month' means calendar month<sup>5</sup>.

1 See the Interpretation Act 1978 ss 8, 22(1), Sch 2 para 3; and PARA 1381 ante.

2 Ibid s 5, Sch 1, Sch 2 para 4(1)(b).

3 Ibid s 9, Sch 2 para 1; and see TIME vol 97 (2010) PARA 316. Section 9 applies to deeds and other instruments and documents as it applies to Acts and subordinate legislation: s 23(3).

4 See ibid s 9, which is expressed to be subject to the Summer Time Act 1972 s 3. The effect of this provision is that any reference to a point of time during summer time (as to which see s 2) is taken to be one hour in advance of Greenwich mean time: see ss 1(1), 3. In respect of the years 1995, 1996 and 1997 see the Summer Time Order 1994, SI 1994/2798; and see TIME vol 97 (2010) PARA 317.

5 Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(a); and see TIME vol 97 (2010) PARAS 307-311.

## **UPDATE**

### **1387 Definitions relating to distance and time**

NOTE 4--1994 Order revoked. As to the years 1998-2001 see the Summer Time Order 1997, SI 1997/2982.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(i) Rules Laid Down by Acts/A. RULES LAID DOWN BY THE INTERPRETATION ACT 1978/1388. Miscellaneous definitions.

### **1388. Miscellaneous definitions.**

In any Act passed after 1850, and in any enactment relating to an offence punishable on indictment or on summary conviction contained in an Act passed in or before that year, unless the contrary appears, (1) words importing the masculine gender include the feminine<sup>1</sup>; and (2) words in the singular include the plural and words in the plural include the singular<sup>2</sup>. In any Act passed after 1 January 1979, words importing the feminine gender include the masculine<sup>3</sup>.

Where any Act passed after 1889 authorises or requires any document to be served by post, whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used, then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the

contrary is proved, is deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post<sup>4</sup>.

In any Act passed after 1889, 'Parliamentary election' means the election of a member to serve in Parliament for a constituency<sup>5</sup>. 'Writing' includes typing, printing, lithography, photography, and other modes of representing or reproducing words in a visible form, and expressions referring to writing are to be construed accordingly<sup>6</sup>. In relation to England and Wales, 'building regulations' means regulations made under the Building Act 1984<sup>7</sup>.

1 Interpretation Act 1978 ss 6(a), 22(1), Sch 2 paras 1, 2; and see PARA 1381 ante. Section 6(a) does not apply for the purposes of the Sexual Offences Act 1985 (kerb-crawling etc): see s 4(3).

2 Ibid s 6(c), Sch 2 paras 1, 2. See *R v Minister of Agriculture and Fisheries, ex p Graham* [1955] 2 QB 140, [1955] 2 All ER 129, CA, where it was held that a sub-committee, a fluctuating body of persons, could be a person appointed. See also *Connelly v Steer* (1881) 7 QBD 520 at 522, CA; *Jarvis Motors (Harrow) Ltd v Carabott* [1964] 3 All ER 89, [1964] 1 WLR 1101. As to when the context otherwise requires see *Sin Poh Amalgamated (HK) Ltd v A-G* [1965] 1 All ER 225 at 228, [1965] 1 WLR 62 at 67, HL, per Lord Pearce. As to where the context required the singular not to include the plural see *Dealex Properties Ltd v Brooks* [1966] 1 QB 542, [1965] 1 All ER 1080, CA. 'The tenant' includes both joint tenants, but not one only of two joint tenants: *Jacobs v Chaudhuri* [1968] 2 QB 470, [1968] 2 All ER 124, CA. A mere emphasis on singularity does not displace the Interpretation Act 1978, but that Act cannot change the character of another Act: *Blue Metal Industries Ltd v Dilley* [1970] AC 827, [1969] 3 All ER 437, PC.

3 Interpretation Act 1978 ss 6(b), 26. Section 6(b) does not apply for the purposes of (1) the Sexual Offences Act 1985 (kerb-crawling etc) (see s 4(3)); or (2) the Employment Act 1989 s 5(3) (certain academic appointments) (see s 5(4)).

4 Ibid s 7, Sch 2 para 3. Whether service has or has not been effected, or notice sent or given, in a particular case depends, however, on the facts and on the particular statute concerned: *Sharpley v Manby* [1942] 1 KB 217, [1942] 1 All ER 66, CA; *Sandland v Neale* [1956] 1 QB 241, [1955] 3 All ER 571, DC; *R v County of London Quarter Sessions Appeals Committee, ex p Rossi* [1956] 1 QB 682, [1956] 1 All ER 670, CA; *Beer v Davies* [1958] 2 QB 187, [1958] 2 All ER 255, DC; *Stylo Shoes Ltd v Prices Tailors Ltd* [1960] Ch 396, [1959] 3 All ER 901; *Moody v Godstone RDC* [1966] 2 All ER 696, [1966] 1 WLR 1085, DC; *Cooper v Scott-Farnell* [1969] 1 All ER 178, [1969] 1 WLR 120, CA; *Hewitt v Leicester City Council* [1969] 2 All ER 802, [1969] 1 WLR 855, CA; *Maltglade Ltd v St Albans RDC* [1972] 3 All ER 129, [1972] 1 WLR 1230, DC; *Saga of Bond Street Ltd v Avalon Promotions Ltd* [1972] 2 QB 325n, [1972] 2 All ER 545n, CA; *Cathrineholm A/S v Norequipment Trading Ltd* [1972] 2 QB 314, [1972] 2 All ER 538, CA. Cf *Thomas Bishop Ltd v Helmville Ltd* [1972] 1 QB 464, [1972] 1 All ER 365, CA; and see *T & D Transport (Portsmouth) Ltd v Limburn* [1987] ICR 696, EAT (application of Interpretation Act 1978 s 7 to industrial tribunal proceedings).

As to the words 'properly addressed' see *White v Weston* [1968] 2 QB 647, [1968] 2 All ER 842, CA; *Migwain Ltd (in liquidation) v Transport and General Workers Union* [1979] ICR 597, EAT. The Interpretation Act 1978 ss 5, 7 do not apply to a requirement to 'present' an application: see *House v Emerson Electric Industrial Controls* [1980] ICR 795, EAT; *British Egg Marketing Board v Gillespie* [1969] NI 139 (recorded delivery service). See also CIVIL PROCEDURE vol 11 (2009) PARA 945. As to the recorded delivery service see POST OFFICE vol 36(2) (Reissue) PARA 119.

5 Interpretation Act 1978 s 5, Sch 1, Sch 2 para 4(1)(a).

6 Ibid Sch 1, Sch 2 para 4(1)(b).

7 Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(b) (definition amended by the Building Act 1984 s 133(1), Sch 6 para 19) applying s 122. See also BUILDING.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(i) Rules Laid Down by Acts/B. STATUTORY DEFINITIONS; IN GENERAL/1389. Nature of statutory definitions.

## **B. STATUTORY DEFINITIONS; IN GENERAL**

### 1389. Nature of statutory definitions.

Parliament often finds it convenient to lay down limited rules of construction by statute<sup>1</sup>. Whether or not framed as such, these are, in most cases, definitions of words or phrases, each of which is required to be construed in the stipulated sense. Wherever a defined term appears, the text in which it occurs must be read as if the full definition were substituted for that term<sup>2</sup>, except for grammatical purposes<sup>3</sup>.

Whether it is so stated or not, a statutory definition does not apply if the contrary intention appears from the Act in which the defined term is used, such as when an enactment implies that in certain circumstances a definition is not to apply<sup>4</sup>.

A statutory definition may either be of general application<sup>5</sup> or restricted to the appearances of the defined term in the Act laying down the definition. It is a simple definition if it defines the term without bringing in other terms which have received, or need, definitions of their own; if it includes such terms it is a compound definition. It is also a compound definition if it has more than one limb<sup>6</sup>.

What is in substance a definition may not be framed in the form of a definition, but may be expressed indirectly. This may be called an oblique definition. It will still have a defining effect, and fall to be treated as equivalent to a definition<sup>7</sup>.

Whatever artificial meaning a statutory definition may attach to a term, its ordinary meaning will retain some potency, and is likely to influence the way the statutory definition is understood and applied by the court<sup>8</sup>. The potency of the term defined may spring from its legal rather than its dictionary meaning<sup>9</sup>. The courts discourage definitions that differ markedly from the usual meaning of the defined term<sup>10</sup>.

A term may be defined differently in different Acts, according to the purpose of each Act<sup>11</sup>. It is even possible for a term to have different meanings within the same Act<sup>12</sup>.

It is a drafting error (less common now than formerly) to present a substantive enactment as a definition, or to incorporate a substantive enactment in a definition. A statutory definition is not expected to have operative effect as an independent enactment and, if it is worded in that way, the courts will tend to construe it restrictively and confine it to the proper function of a definition<sup>13</sup>. It is another form of drafting error to include the term defined within the definition<sup>14</sup>.

Instead of including the definition in the Act where the term is used, it is sometimes found convenient to leave it to be laid down in later, delegated, legislation. This allows the term to be given different meanings in different contexts, and provides flexibility<sup>15</sup>.

1 For a list of terms defined generally by Act see the heading Act of Parliament in the official Index to the Statutes.

2 *Thomas v Marshall*[1953] AC 543 at 556, [1953] 1 All ER 1102 at 1105, HL, per Lord Morton; *Suffolk County Council v Mason*[1979] AC 709 at 713, [1979] 2 All ER 369 at 374, HL, per Lord Diplock.

3 'I do not think that statutory definitions require you bodily to substitute the definitions for the words defined so as to enable you as a matter of grammar to treat words in the definitions as being antecedents of words actually appearing later in the statutory provision. The definitions explain what the expressions mean in the statutory provision, but they remain outside that provision and for grammatical purposes leave unchanged in the provision the actual words that are there, even though they have become freighted with their statutory meanings': *No 20 Cannon Street Ltd v Singer and Friedlander Ltd*[1974] Ch 229 at 240, [1974] 2 All ER 577 at 586 per Megarry J.

4 See eg *Strathern v Padden* 1926 JC 9 at 13. As to implied provisions see PARA 1234 ante.

5 As, for example, where the definition is laid down by the Interpretation Act 1978 (see PARA 1380 et seq ante) or where it is laid down for general application by a particular enactment.

6 See eg the definition of 'Bank of England' in PARA 1384 note 3 ante.

7 See eg *Merton London Borough Council v Gardiner*[1981] QB 269, [1981] 2 WLR 232, CA (where the words 'two employees are to be treated as associated if...' in the Employment Protection (Consolidation) Act 1978 s 153(4) were construed as introducing a comprehensive definition).

8 Thus it was said of the definition of 'wages' in the Wages Act 1986 s 7 (as amended) 'it is important to approach such definition bearing in mind the normal meaning of that word': *Delaney v Staples*[1992] 1 AC 687 at 692, [1992] 1 All ER 944 at 947, HL, per Lord Browne-Wilkinson. In interpreting the oblique definition of 'local connection' given in the Housing (Homeless Persons) Act 1977 s 19(1) (repealed: see now the Housing Act 1985 s 61 (person to be taken to have, or not to have, a local connection with an area by reference to stated concepts (such as normal residence, employment and family connections)), the court treated the concepts not in their ordinary sense but as coloured by the overall idea of 'local connection': see *Eastleigh Borough Council v Betts*[1983] 2 AC 613 at 628, [1983] 2 All ER 1111 at 1120, HL, per Lord Brightman. See also *Esso Petroleum Co Ltd v Ministry of Defence*[1990] Ch 163, [1990] 1 All ER 163 (definition of 'public revenue dividends' stated that it included 'interest'; held not to include interest on tort damages); *British Amusement Catering Trades Assocn v Westminster City Council* [1989] AC 147 at 157, [1988] 1 All ER 740 at 745, HL, per Lord Griffiths (definition of 'cinematograph exhibition' did not include video games because the defined term 'immediately brings to mind a film show'); *A-G's Reference (No 1 of 1985)*[1986] QB 491 at 507, [1986] 2 All ER 219 at 225, CA, per Lord Lane CJ (definition of 'theft' did not include selling one's own beer); *Claydon v Bradley*[1987] 1 All ER 522 at 528, [1987] 1 WLR 521 at 527-528, CA, per Neill LJ (definition of 'promissory note' did not include a receipt). In the Criminal Justice Act 1991 s 31(1), the original definition of 'sexual offence' for the purposes of the Act stated that such an offence was as an offence 'under' specified Acts which did not include the Criminal Attempts Act 1981; it was nevertheless held in *R v Robinson*[1993] 2 All ER 1, [1993] 1 WLR 168, CA that attempted rape should be treated as an offence 'under' the Sexual Offences Act 1956 (one of the specified Acts) even though the indictment was laid under the 1981 Act. This strained construction is attributable to the potency of the term defined. That definition of 'sexual offence' is prospectively substituted by the Criminal Justice and Public Order Act 1991 s 168(1), Sch 9 para 45, as from a day to be appointed, so as to include an offence under the Criminal Attempts Act 1981.

9 Thus it was held that the apparently comprehensive definition of 'gaming' in the Betting, Gaming and Lotteries Act 1963 s 55(1) (as originally enacted) was coloured by the common law meaning of the word, which must be taken to apply so as to cut down its width: *McCollom v Wrightson*[1968] AC 522, [1968] 1 All ER 514, HL (the new definition of 'gaming' substituted by the Gaming Act 1968 s 53, Sch 11 Pt 1 means that this case would now be decided differently). See also *Conservative and Unionist Central Office v Burrell (Inspector of Taxes)*[1982] 2 All ER 1 at 4, [1982] 1 WLR 522 at 525, CA, per Lawton LJ.

10 See eg *Lindsay v Cundy*(1876) 1 QBD 348 at 358; *Bradley v Baylis*(1881) 8 QBD 195 at 210, 230; *R v Comrs under the Boilers Explosion Act 1882*[1891] 1 QB 703 at 716, CA. For examples of statutory definitions producing unexpected results see *R v Comrs under the Boiler Explosions Act 1882* supra at 714 (pipe a 'boiler'); *Dunsby v BBC*(1983) Times, 25 July (film studio a 'factory'); *Savoy Hotel Co v London County Council*[1900] 1 QB 665 at 669 (Savoy Hotel a 'shop'). See also *R v Cambridgeshire Justices*, *R v Shropshire Justices*, *R v Gloucestershire Justices* (1838) 7 Ad & El 480 at 491; *Midland Rly Co v Ambergate, Nottingham and Boston and Eastern Junction Rly Co* (1853) 10 Hare 359; *Ex p Ferguson*(1871) LR 6 QB 280 at 290; *The Gauntlet*(1871) LR 3 A & E 381 at 388; *Pound v Plumstead Board of Works*(1871) LR 7 QB 183 at 194; *Nutter v Accrington Local Board of Health*(1878) 4 QBD 375 at 384, CA; *R v Pearce*(1880) 5 QBD 386 at 389, DC; *London School Board v Jackson*(1881) 7 QBD 502 at 504.

11 See eg *Earl of Normanton v Giles*[1980] 1 All ER 106 at 109, [1980] 1 WLR 28 at 31, HL, per Lord Wilberforce (varying definitions of 'livestock').

12 See eg the Trade Union and Labour Relations (Consolidation) Act 1992 ss 218, 244 (differing definitions of 'trade dispute' for different purposes).

13 See eg *Wakefield Board of Health v West Riding & Grimsby Rly Co*(1865) LR 1 QB 84.

14 See eg the Supreme Court Act 1981 s 72(5) (amended by the Copyright, Designs and Patents Act 1988 s 303(1), Sch 7 para 28(1), (2)) ('intellectual property' means any patent, trade mark, copyright, design right, registered design, technical or commercial information or other intellectual property'). Cf *Davies Jenkins & Co Ltd v Davies (Inspector of Taxes)*[1968] AC 1097, [1967] 1 All ER 913, HL.

15 See eg the Social Security Contributions and Benefits Act 1992 s 135(6) (regulations may specify circumstances in which persons are to be treated as being or as not being severely disabled); and see *Chief Adjudication Officer v Foster*[1993] 1 AC 754, [1993] 1 All ER 705, HL, where the potency of the term defined (see note 8 supra) was not considered. See also *A-G for Northern Ireland's Reference (No 1 of 1975)*[1977] AC 105, [1976] 2 All ER 937, HL.

## UPDATE

## 1389 Nature of statutory definitions

NOTE 14--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(i) Rules Laid Down by Acts/B. STATUTORY DEFINITIONS; IN GENERAL/1390. Types of statutory definition.

### 1390. Types of statutory definition.

A statutory definition may be (1) a clarifying definition, which clarifies the meaning of a common word or phrase by stating that it does or does not include specified matters<sup>1</sup>; (2) a labelling definition, which uses a term as a label denoting a concept, perhaps complex, that can then be referred to merely by use of the label<sup>2</sup>; (3) a referential definition, which attracts a meaning already established in law, whether by statute or otherwise<sup>3</sup>; (4) an exclusionary definition, which excludes a meaning that otherwise would or might be taken to be included in the term<sup>4</sup>; (5) an enlarging definition, which adds a meaning that otherwise would or might not be taken to be included in the term<sup>5</sup>; or (6) a comprehensive definition, which provides a full, that is exhaustive, statement of the meaning of the term<sup>6</sup>.

1 See eg the definition of 'intellectual property' in the Supreme Court Act 1981 s 72(5) (as amended) cited in PARA 1389 note 14 ante (but note the criticism of the drafting in the text thereto). See also *IRC v Parker* [1966] AC 141 at 161, [1966] 1 All ER 399 at 404, HL, per Viscount Dilhorne ('It is a familiar device of a draftsman to state expressly that certain matters are to be treated as coming within a definition to avoid argument on whether they [do] or not').

2 See eg the Interpretation Act 1978 s 7 (provisions relating to the serving of a document by post) cited in PARA 1388 ante. An amending Act may use the label 'the principal Act' to denote the Act it is amending: see PARA 1215 ante. For another example see the Fair Trading Act 1973 s 48 (monopoly reference framed so as to require the investigation of certain matters only 'is in this Act referred to as a 'monopoly reference limited to the facts'').

3 See eg the definition of 'Charity Commissioners' cited in PARA 1384 ante.

4 See eg the Fair Trading Act 1973 s 63(1)(a) ('merger reference' is to be construed as not including a reference made under s 59). The exclusion may be effected merely by defining the term in an unusually narrow way (see eg the Animal Boarding Establishments Act 1963 s 5(2): 'animal' means any dog or cat'), but this is not good drafting.

5 See eg the definition of 'swear' cited in PARA 1386 ante.

6 See eg the definition of 'the Privy Council' cited in PARA 1384 note 1 ante.

## UPDATE

### 1390 Types of statutory definition

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(ii) Miscellaneous Common Law Rules/1391. Plain meaning rule.

## **(ii) Miscellaneous Common Law Rules**

### **1391. Plain meaning rule.**

It is a rule of the common law, which may be called the plain meaning rule, that where, in relation to the facts of the instant case, the enactment under inquiry<sup>1</sup> is grammatically capable of one meaning only<sup>2</sup> and, on an informed interpretation of that enactment<sup>3</sup>, the interpretative criteria<sup>4</sup> raise no real doubt<sup>5</sup> as to whether that meaning is the one intended by the legislator<sup>6</sup>, then the legal meaning of the enactment<sup>7</sup> is taken to correspond to that grammatical meaning<sup>8</sup>; but that in any other case the basic rule of statutory interpretation<sup>9</sup> is to be applied.

1 For the meaning of 'enactment' see PARA 1232 ante.

2 As to the presumption favouring the literal meaning see PARA 1470 post. As to when an enactment has several meanings, ie is grammatically ambiguous, see PARA 1487 post.

3 As to the informed interpretation rule see PARA 1414 post.

4 As to the interpretative criteria see PARA 1375 ante.

5 As to cases where there is real doubt see PARA 1374 ante.

6 As to the intention of the legislator see PARA 1372 ante.

7 As to the legal meaning see PARA 1373 ante.

8 'As the meaning of the words... is clear, and no ambiguity, whether patent or latent, lurks within them, under our rules for the construction of Acts of Parliament the statutory intention must be found within those words': *Macarthy's Ltd v Smith* [1979] ICR 785 at 793, [1979] 3 All ER 325 at 332, CA, per Lawton LJ. See also *Sussex Peerage Case* (1844) 11 Cl & Fin 85 at 143, HL; *Fordyce v Bridges* (1847) 1 HL Cas 1 at 4; *Philpott v President etc of St George's Hospital* (1857) 6 HL Cas 338 at 349; *Gaudet v Brown, Cargo ex Argos* (1873) LR 5 PC 134 at 153; *Hornsey Local Board v Monarch Investment Building Society* (1889) 24 QBD 1 at 5, CA; *London and North-Western Ry Co v Evans* [1893] 1 Ch 16 at 27, CA; *R v Titterton* [1895] 2 QB 61 at 67, DC; *Vacher & Sons Ltd v London Society of Compositors* [1913] AC 107 at 117-118, HL; *Westminster Bank Ltd v Zang* [1966] AC 182 at 122, [1966] 1 All ER 114 at 120, HL, per Lord Reid.

9 See PARA 1376 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(ii) Miscellaneous Common Law Rules/1392. Commonsense construction rule.

### **1392. Commonsense construction rule.**

It is a rule of the common law, which may be referred to as the commonsense construction rule, that when considering, in relation to the facts of the instant case, which of the opposing

constructions of the enactment<sup>1</sup> would give effect to the legislative intention<sup>2</sup>, the court should presume that the legislator intended common sense to be used in construing the enactment<sup>3</sup>.

1 As to the opposing constructions of an enactment see PARA 1377 ante; and for the meaning of 'enactment' see PARA 1232 ante.

2 As to the intention of the legislator see PARA 1372 ante.

3 *Gardner v Jay* (1885) 29 ChD 50 at 58, CA, per Bowen LJ; *Barnes v Jarvis* [1953] 1 All ER 1061 at 1063, [1953] 1 WLR 649 at 652, DC, per Lord Goddard CJ; *Beck v Scholz* [1953] 1 QB 570, [1953] 1 All ER 814, CA; *R v Orpin* [1975] QB 283 at 287, [1974] 2 All ER 1121 at 1123, CA, per Lord Widgery; *Sever v Duffy* [1977] Crim LR 484, [1977] RTR 429, DC; *R v Rennie* [1982] 1 All ER 385 at 389, [1982] 1 WLR 64 at 70, CA, per Lord Lane CJ; *R v Miller* [1982] QB 532 at 540, [1982] 2 All ER 386 at 392-393, CA, per May LJ; *Lambert v Ealing London Borough Council* [1982] 2 All ER 394 at 397, [1982] 1 WLR 550 at 555, CA, per Lord Denning MR; *Din v London Borough of Wandsworth* [1983] 1 AC 657 at 682, [1981] 3 All ER 881 at 897, HL, per Lord Bridge; *Bradford v Wilson* [1983] Crim LR 482, DC, per Robert Goff LJ; *Wrothwell (FJH) Ltd v Yorkshire Water Authority* [1984] Crim LR 43 per McCullough J.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/A. IN GENERAL/1393. Statement of the functional construction rule.

### **(iii) The Functional Construction Rule**

#### **A. IN GENERAL**

##### **1393. Statement of the functional construction rule.**

Under the common law, an enactment<sup>1</sup> must be construed so that significance is given to each component of the Act containing it according to its legislative function as such a component<sup>2</sup>. This may be called the functional construction rule.

1 For the meaning of 'enactment' see PARA 1232 ante.

2 As to the structure and components of an Act see PARA 1256 ante; and as to the application of the functional construction rule to particular components of an enactment see PARA 1394 et seq post.

The enactment and royal assent procedure indicate how an Act acquires its various components, and what their true status is: see PARA 1245 ante. Parliament puts out as its Act the entirety of the text to which royal assent is given, which must be considered in the construction of any enactment contained in the Act.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/B. INTERPRETATION BY REFERENCE TO FRAMEWORK OF ACT/1394. Interpretative significance of framework.

#### **B. INTERPRETATION BY REFERENCE TO FRAMEWORK OF ACT**

##### **1394. Interpretative significance of framework.**

The framework of an Act consists of its structure and format<sup>1</sup> together with any outside enactments incorporated in it<sup>2</sup>. In construing any provision of the Act it is necessary to bear its framework in mind, since the Act is to be treated as a whole<sup>3</sup>.

1 As to the structure and format of an Act see PARA 1395 post.

2 As to the incorporation of other enactments see PARA 1396 post.

3 *South West Water Authority v Rumble's* [1985] AC 609 at 617, [1985] 1 All ER 513 at 516, HL, per Lord Scarman. As to construction as a whole see PARA 1484 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/B. INTERPRETATION BY REFERENCE TO FRAMEWORK OF ACT/1395. Interpretation by reference to structure and format.

### **1395. Interpretation by reference to structure and format.**

The structure and format of an Act<sup>1</sup> may be used in its interpretation so far as, having regard to their legislative function, they provide a reliable guide<sup>2</sup>. They can be relevant in the construction of any provision in an Act, and should never be disregarded<sup>3</sup>.

It is the modern practice to break a long section or subsection into numbered paragraphs, and to break a long paragraph of a Schedule into numbered subparagraphs. Such components may be further sub-divided. They are normally intended to be read as a continuous sentence, despite spatial breaks<sup>4</sup>.

If material is put into the form of a footnote it must be construed accordingly<sup>5</sup>.

1 As to the structure and format of an Act see also PARA 1394 ante.

2 As to the functional construction rule governing interpretation see PARA 1393 ante.

3 *Alcom Ltd v Republic of Colombia* [1984] 1 All ER 1, [1983] 3 WLR 906. 'Arrangement may be of the highest importance in suggesting one interpretation and concealing another': RE Megarry V-C, 'Copulatives and Punctuation in Statutes' 75 LQR 29 at 31. For cases where the court was guided in its construction of an enactment by its typography and layout see *Re Allsop* [1914] 1 Ch 1; *Dormer v Newcastle-on-Tyne Corp'n* [1940] 2 KB 204, [1940] 1 All ER 219; *Piper v Harvey* [1958] 1 QB 439, [1958] 1 All ER 454, CA.

4 See PARAS 1259-1260 ante. Where a provision consists of several numbered paragraphs with the word 'or' before the last paragraph only, that word is taken to be implied before the previous paragraphs after the first: RE Megarry V-C, 'Copulatives and Punctuation in Statutes' 75 LQR 29. Cf *Bricker v Whatley* (1684) 1 Vern 233; *Phillips v Price* [1959] Ch 181, [1958] 3 All ER 386.

5 *Erven Warnink BV v Townend & Sons (Hull) Ltd (No 2)* [1982] 3 All ER 312 at 316, [1982] RPC 511 at 515, CA.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/B. INTERPRETATION BY REFERENCE TO FRAMEWORK OF ACT/1396. Interpretation where other enactments incorporated by reference.



### 1396. Interpretation where other enactments incorporated by reference.

Other enactments incorporated in an Act<sup>1</sup> may be referred to in interpreting that Act so far as, having regard to their legislative function, they provide a reliable guide<sup>2</sup>. Where an Act incorporates by reference the whole or any part of an earlier Act, the provisions so incorporated must generally be construed as if they were set out in full in the later Act<sup>3</sup>. Where a general Act is incorporated with a special Act subsequently passed relating to a particular subject matter<sup>4</sup>, a provision in the special Act prevails over an inconsistent provision in the general Act<sup>5</sup>.

Where particular sections of an earlier Act are expressly incorporated into a later Act, there is a conflict of authority as to whether other parts of the earlier Act which are not incorporated may<sup>6</sup> or may not<sup>7</sup> be referred to in construing the sections which are incorporated. It seems probable that, on the principles applicable to Acts in *pari materia*<sup>8</sup>, they may be referred to, but only where there is an ambiguity or obscurity in the incorporated sections which cannot otherwise be resolved.

1 As to the incorporation of other enactments in an Act see PARA 1257 ante; but as to difficulties of interpretation thereby caused see *Jones v Conway and Colwyn Bay Joint Water Supply Board* [1893] 2 Ch 603, CA.

2 Ie by virtue of the functional construction rule: see PARA 1393 ante.

3 Re *Barker* (1881) 17 ChD 241, CA; *Re Wood's Estate, ex p Works and Buildings Comrs* (1886) 31 ChD 607 at 615, CA; *London and North Western Rly Co v Runcorn Rural Council* [1898] 1 Ch 561 at 563, CA. See also COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 509.

4 A provision is commonly contained in Clauses Acts providing that they are to be incorporated in subsequent special Acts save in so far as expressly varied or excluded: see eg the Lands Clauses Consolidation Act 1845 s 1; the Railways Clauses Consolidation Act 1845 s 1; and the Markets and Fairs Clauses Act 1847 s 1 (partially incorporated in the Animal Health Act 1981 s 54(2), (3)). As to Clauses Acts see PARA 1229 ante.

5 *A-G v Great Eastern Rly Co* (1872) 7 Ch App 475 at 482 (on appeal (1873) LR 6 HL 367 at 374); *Great Western Rly Co v Swindon and Cheltenham Extension Rly Co* (1884) 9 App Cas 787 at 796, 801, HL. See also *Midland Rly Co v Ambergate, Nottingham and Boston and Eastern Junction Rly Co* (1853) 10 Hare 359; MARKETS, FAIRS AND STREET TRADING vol 29(2) (Reissue) PARA 1011; RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 291; and see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 510.

6 *Portsmouth Corpn v Smith* (1885) 10 App Cas 364 at 371, HL, where it was said that the incorporated section must be read in the sense which it bore in the original Act from which it was taken, and consequently it is legitimate to refer to all the rest of that Act in order to ascertain what the section meant. As to the difficulties created by incorporating parts of one Act in another see *Knill v Towse* (1889) 24 QBD 186 at 195-196, DC.

7 *Re Wood's Estate, ex p Works and Buildings Comrs* (1886) 31 ChD 607 at 615, CA, where it was said that the incorporated sections are to be treated as if written in the later Act and therefore there is no occasion to refer to the former Act at all.

8 See PARA 1485 post. As to Acts in *pari materia* see PARA 1220 ante.

## UPDATE

### 1396 Interpretation where other enactments incorporated by reference

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/C. INTERPRETATION BY REFERENCE TO OPERATIVE COMPONENTS OF ACT/1397. Interpretative significance of operative components of an Act.

### **C. INTERPRETATION BY REFERENCE TO OPERATIVE COMPONENTS OF ACT**

#### **1397. Interpretative significance of operative components of an Act.**

The significance<sup>1</sup> of the operative components of an Act<sup>2</sup> in its interpretation lies in the fact that they are the portions of the Act in which the legislative message principally resides.

1 As to the significance, in detail, of specific types of operative component see PARAS 1398 (section), 1399 (Schedule), 1400 (proviso) and 1401 (saving) post.

2 As to the nature of the operative components of an Act see PARA 1258 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/C. INTERPRETATION BY REFERENCE TO OPERATIVE COMPONENTS OF ACT/1398. Interpretation by reference to nature of a section.

#### **1398. Interpretation by reference to nature of a section.**

A section<sup>1</sup> of an Act is the primary indication of Parliament's meaning and intention<sup>2</sup>, and must be construed, by virtue of the functional construction rule<sup>3</sup>, as a proposition, or series of propositions, consisting of one or more enactments<sup>4</sup>. Historically, judges have said that the division of an Act into sections is arbitrary, and ought not to be treated as furnishing a guide to its construction<sup>5</sup>. This is no longer the case, as drafters take great care to design a section so that it deals with a single point; and the way the sections are organised and arranged is to be taken as a reliable guide to legislative intention<sup>6</sup>.

1 As to the nature of a section see PARA 1259 ante.

<sup>2</sup> *Spencer v Metropolitan Board of Works* (1882) 22 ChD 142 at 162 per Jessel MR.

3 As to the functional construction rule see PARA 1393 ante.

4 As to the nature of an enactment see PARA 1232 ante.

5 See *R v Newark-upon-Trent (Inhabitants)* (1824) 3 B & C 59 at 63, 71.

6 As to modern drafting practice see further PARA 1242 note 4 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/C. INTERPRETATION BY REFERENCE TO OPERATIVE COMPONENTS OF ACT/1399. Interpretation by reference to nature of a Schedule.

### **1399. Interpretation by reference to nature of a Schedule.**

A Schedule<sup>1</sup> to an Act is to be construed, by virtue of the functional construction rule<sup>2</sup>, as an adjunct to the main body of the Act but nevertheless fully a part of it. Any conflict between the inducing section (or any other section of the Act) and the Schedule is to be resolved without regard to the fact that some of the relevant words are contained in the Schedule rather than in a section<sup>3</sup>.

Occasionally an Act may provide that a Schedule is to be interpreted in accordance with notes contained in it<sup>4</sup>.

It is not generally permissible to limit the meaning of a clear enactment by referring to a form scheduled to it<sup>5</sup>, but a scheduled form may be referred to in order to throw light on the construction of a doubtful enactment<sup>6</sup>. This also applies to scheduled plans; in some cases the enactment may confer a greater right than that which is indicated by the plan<sup>7</sup>.

1 As to the nature of a Schedule see PARA 1260 ante.

2 As to the functional construction rule see PARA 1393 ante.

3 'If the Act says that the Schedule is to be used for a certain purpose and the heading of the part of the Schedule in question shows that it is prima facie at any rate devoted to that purpose, then you must read the Act and the Schedule as though the Schedule were operating for that purpose, and if you can satisfy the language of the section without extending it beyond that purpose you ought to do it. But if in spite of that you find in the language of the Schedule words and terms that go clearly outside that purpose, then you must give effect to them and you must not consider them as limited by the heading of that part of the Schedule or by the purpose mentioned in the Act for which the Schedule is prima facie to be used. You cannot refuse to give effect to clear words simply because prima facie they seem to be limited by the heading of the Schedule and the definition of the purpose of the Schedule contained in the Act': *IRC v Gittus* [1920] 1 KB 563 at 576, CA, per Lord Sterndale MR. For a case where ambiguous words in a Schedule were construed by reference to a heading see *Qualter, Hall & Co Ltd v Board of Trade* [1962] Ch 273, [1961] 3 All ER 389, CA. See also *IRC v Littlewoods Mail Order Stores Ltd* [1963] AC 135, [1962] 2 All ER 279, HL. Conflicts between Schedule and sections should be considered in the light of the principle that an Act is to be construed as a whole: see PARA 1484 post.

4 See eg the Value Added Tax Act 1994 s 96(9). Of the notes set out in certain PARAGRAPHS of the Financial Services Act 1986 s 1, Sch 1 (as amended) (see eg Sch 1 para 9 (as amended)), Lord Donaldson MR said: 'several of these paragraphs include notes which substantially modify what would otherwise be the effect of the text of the paragraph, which, to me at least, is a novel form of legislation and potentially somewhat confusing, at least to a lawyer': *City Index Ltd v Leslie* [1992] QB 98 at 105, [1991] 3 All ER 180 at 184, CA.

5 *R v Baines* (1840) 12 Ad & El 210 at 226; *Dean v Green* (1882) 8 PD 79 at 89; *Shore v Cunningham* [1917] 2 IR 360. See also *Ellerman Lines Ltd v Murray* [1931] AC 126, HL (convention scheduled to Act), and PARA 1426 post.

6 *Thomas v Kelly* (1883) 13 App Cas 506 at 511, HL. Cf COMPULSORY ACQUISITION OF LAND. See also *Re Andrew* (1875) 1 ChD 358, and *Re Norman, ex p Board of Trade* [1893] 2 QB 369, CA (where forms contained in rules which had effect as if enacted in the Acts under which they were made were referred to for the purpose of interpreting those Acts); *Eldorado Ice Cream Co Ltd v Clark* [1938] 1 KB 715, [1938] 1 All ER 330, DC (where a form contained in regulations which were not given such an effect was referred to for the purpose of interpreting the Act). As to the use of subordinate legislation as an aid to construction see PARA 1428 post.

7 *Manchester Ship Canal Co v Manchester Racecourse Co* [1901] 2 Ch 37, CA.

## **UPDATE**

### **1399 Interpretation by reference to nature of a Schedule**

NOTE 4--Financial Services Act 1986 repealed: Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/C. INTERPRETATION BY REFERENCE TO OPERATIVE COMPONENTS OF ACT/1400. Interpretation by reference to nature of a proviso.

#### **1400. Interpretation by reference to nature of a proviso.**

By virtue of the functional construction rule<sup>1</sup>, an Act containing a proviso<sup>2</sup> is to be construed as a whole<sup>3</sup> and a section containing a proviso is also to be construed as a whole, within the Act<sup>4</sup>. A proviso is 'usually construed as operating to qualify that which precedes it'<sup>5</sup>, so that it makes the preceding provision of an enactment subject to its words<sup>6</sup>.

In the case of modern enactments which have been drafted precisely<sup>7</sup>, the proviso is to be taken as limited in its operation to the section or other provision which it qualifies<sup>8</sup>; but it is the substance that matters and what is in form a proviso might, under close scrutiny, be found to be in substance a fresh enactment which adds to and does not merely qualify that which goes before<sup>9</sup>. On the other hand, where a different drafting technique is used to achieve the same result as a proviso, the qualifying words, whether express or implied, should be treated as an exception or proviso whatever their form<sup>10</sup>.

1 As to the functional construction rule see PARA 1393 ante.

2 As to the nature of a proviso see PARA 1261 ante.

3 As to construction as a whole see PARA 1484 post.

4 *Jennings v Kelly* [1940] AC 206 at 229, [1939] 4 All ER 464 at 477, HL.

5 *Re Memco Engineering Ltd* [1986] Ch 86 at 98, [1985] 3 All ER 267 at 273. 'When one finds a proviso to a section, the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject matter of the proviso': *Mullins v Treasurer of Surrey* (1880) 5 QBD 170 at 173 per Lush J. While the substance of this dictum is undoubtedly correct, the proviso should not be treated as qualitatively different from the rest of the section. The entire section, including the proviso, is an operative component of the Act: *Gubay v Kingston (Inspector of Taxes)* [1984] 1 All ER 513 at 518-519, [1984] 1 WLR 163 at 169-170, HL, per Lord Scarman (dissenting, but not on this point). See also *Duncan v Dixon* (1890) 44 ChD 211 at 215; *West Derby Union v Metropolitan Life Assurance Co* [1897] AC 647 at 652, HL; *Local Government Board v South Stoneham Union* [1909] AC 57 at 63, HL; *Toronto Corp'n v A-G of Canada* [1946] AC 32 at 37, PC.

6 Where a statutory provision is expressed to be subject to another provision, the other provision prevails if there is any conflict: see *C and J Clark Ltd v IRC* [1973] 2 All ER 513 at 520, [1973] 1 WLR 905 at 911 per Megarry J (affd [1975] 1 All ER 801, [1975] 1 WLR 413, CA).

7 As to modern drafting techniques see PARA 1242 note 4 ante

8 *Leah v Two Worlds Publishing Co* [1951] Ch 393 at 398; *Lloyds and Scottish Finance Ltd v Modern Cars & Caravans (Kingston) Ltd* [1966] 1 QB 764 at 780-781, [1964] 2 All ER 732 at 740 per Edmund-Davies J: 'The proviso must of necessity be limited in its operation to the ambit of the section which it qualifies'.

Historically, judges used to cast doubt on the value of a proviso in throwing light on the meaning of words qualified by it: see eg *West Derby Union v Metropolitan Life Assurance Co* [1897] AC 647 at 652, HL, per Lord Watson and at 655 per Lord Herschell. This was because provisos, like savings, were often put down as amendments to Bills by their opponents, and accepted to allay often groundless fears. This may still happen with private Bills; but since the establishment of the Parliamentary Counsel Office in 1869 it has not been true

of public general Acts. As to the Parliamentary Counsel Office see PARA 1242 ante; and as to private Bills see PARA 1212 ante.

9 This is known as a false proviso: see eg *Rhondda UDC v Taff Vale Rly Co* [1909] AC 253 at 258, HL; *Eastbourne Corpn v Fortes Ice Cream Parlour (1955) Ltd* [1959] 2 QB 92 at 107, [1959] 2 All ER 102 at 107, CA; *Stamp Duties Comr v Atwill* [1973] AC 558 at 561, [1973] 1 All ER 576 at 579, PC, per Viscount Dilhorne; *B v B (mental patient)* [1979] 3 All ER 494, [1980] 1 WLR 116, CA. Cf *R v Dibdin* [1910] P 57; affd sub nom *Thompson v Dibdin* [1912] AC 533, HL. In old statutes the words 'provided that', instead of introducing a true proviso, were sometimes used as equivalent to 'it is hereby provided that' (ie 'provision is hereby made that').

10 As to the effect of an exception or proviso see PARA 1261 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/C. INTERPRETATION BY REFERENCE TO OPERATIVE COMPONENTS OF ACT/1401. Interpretation by reference to nature of a saving.

#### **1401. Interpretation by reference to nature of a saving.**

The principles of interpretation applied<sup>1</sup> to savings<sup>2</sup> are similar to those which apply to provisos<sup>3</sup>, but savings are regarded as unreliable guides to the provisions to which they are attached<sup>4</sup>. A saving is taken not to be intended to confer any right which did not exist already<sup>5</sup>, and, where an enactment is subject to a saving for certain rights, it may be implied that the enactment is intended to abrogate other rights not expressly mentioned in the saving<sup>6</sup>.

1 ie by virtue of the functional construction rule: see PARA 1393 ante.

2 As to the nature of a saving see PARA 1262 ante.

3 As to the interpretation of provisos see PARA 1400 ante.

4 '...Considerable caution is needed in construing a general statutory provision by reference to its statutory exceptions. 'Saving clauses' are often included by way of reassurance, for avoidance of doubt or from abundance of caution. Section 27(9)(a) [of the Race Relations Act 1968 (repealed)] itself provides a striking example: it provides that nothing in the Act shall invalidate certain rules restricting certain classes of employment to 'persons of particular birth, citizenship, nationality, descent or residence', and 'residence', at least, is not conceivably within the ambit of s 1(1)': *Ealing London Borough Council v Race Relations Board* [1972] AC 342 at 363, [1972] 1 All ER 105 at 115, HL, per Lord Simon of Glaisdale.

5 *Alton Woods' Case* (1600) 1 Co Rep 40b; *Arnold v Gravesend Corpn* (1856) 2 K & J 574 at 591; *Butcher v Henderson* (1868) LR 3 QB 335; *R v Pirehill North Justices* (1884) 14 QBD 13 at 19.

6 See *Re Williams, Jones v Williams* (1887) 36 ChD 573. As to implied enactments see PARA 1234 ante. This is an example of the application of the *expressio unius* rule: see PARA 1494 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/D. INTERPRETATION BY REFERENCE TO AMENDABLE DESCRIPTIVE COMPONENTS OF ACT/1402. Interpretative significance of amendable descriptive components of an Act.

#### **D. INTERPRETATION BY REFERENCE TO AMENDABLE DESCRIPTIVE COMPONENTS OF ACT**

## 1402. Interpretative significance of amendable descriptive components of an Act.

The significance of the amendable descriptive components of an Act<sup>1</sup> in interpretation lies in the fact that they describe, in ways which were subject to formal amendment in Parliament, the portions of the Act in which the legislative message principally resides<sup>2</sup>.

1 As to the nature of the amendable descriptive components see PARA 1263 ante.

2 Ie they describe the operative components of the Act: see PARA 1397 et seq ante. As to the detailed significance of these components see PARAS 1403 (long title), 1404 (preamble), 1405 (purpose clause), 1406 (recital), 1407 (short title) and 1408 (example) post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/D. INTERPRETATION BY REFERENCE TO AMENDABLE DESCRIPTIVE COMPONENTS OF ACT/1403. Interpretation by reference to long title.

## 1403. Interpretation by reference to long title.

The long title<sup>1</sup> may be used in interpretation<sup>2</sup> so far as, having regard to its function, it provides a reliable guide<sup>3</sup>. The interpreter needs to be aware that a long title is drafted to comply with procedural rules, and is not designed as an interpreter's guide to the contents of the Act<sup>4</sup>.

The long title is undoubtedly part of the Act, though its value in interpretation has often been exaggerated by judges<sup>5</sup>. The courts have been inconsistent as to whether the effect of operative provisions should be treated as being cut down by the long title. This is to be expected, since the weight of other relevant factors is bound to vary<sup>6</sup>.

1 As to the nature of the long title see PARA 1264 ante.

2 Ie by virtue of the functional construction rule: see PARA 1393 ante.

3 *Vacher & Sons Ltd v London Society of Compositors* [1913] AC 107 at 128, HL, per Lord Moulton. See also *National Telephone Co Ltd v HM Postmaster-General* [1913] AC 546 at 560, HL, per Lord Moulton; *Fenton v J Thorley & Co Ltd* [1903] AC 443 at 447, HL, per Lord Macnaghten; *Fisher v Raven* [1964] AC 210 at 232, [1963] 2 All ER 389 at 394, HL, per Lord Dilhorne LC; *Ealing London Borough Council v Race Relations Board* [1972] AC 342 at 361, [1972] 1 All ER 105 at 114, HL, per Lord Simon of Glaisdale; *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 at 647, [1975] 1 All ER 810 at 844, HL, per Lord Simon of Glaisdale; *R v Wheatley* [1979] 1 All ER 954, [1979] 1 WLR 144, CA. See also PARA 1402 ante.

4 See PARA 1264 ante.

5 See eg *Fielding v Morley Corp'n* [1899] 1 Ch 1 at 3-4; *Suffolk County Council v Mason* [1979] AC 705 at 720, [1979] 2 All ER 369 at 379, HL; *Gold Star Publications Ltd v DPP* [1981] 2 All ER 257 at 260-261, [1981] 1 WLR 732 at 736-737, HL.

6 See eg *Watkinson v Hollington* [1944] KB 16, [1943] 2 All ER 573, CA, where the long title was held to cut down the meaning of an operative provision; not cited in *R v Galvin* [1987] QB 862, [1987] 2 All ER 851, CA, a contrary decision; and see *Re Groos's Estate* [1904] P 269; *Ward v Holman* [1964] 2 QB 580, [1964] 2 All ER 729, CA. As to the weighing of interpretative factors see PARA 1378 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/D. INTERPRETATION BY REFERENCE TO AMENDABLE DESCRIPTIVE COMPONENTS OF ACT/1404. Interpretation by reference to preamble.

#### **1404. Interpretation by reference to preamble.**

A preamble<sup>1</sup> may be used in interpretation<sup>2</sup> so far as, having regard to its function, it provides a reliable guide<sup>3</sup>. It may be thought of as 'a key to open the minds of the makers of the Act, and the mischiefs which they intended to redress'<sup>4</sup> or as 'an introduction to and in a sense a prefatory or explanatory note in regard to the sections which are to follow'<sup>5</sup>. The courts, however, are reluctant to allow a preamble to override inconsistent operative provisions<sup>6</sup>.

Since the preamble, where present, is a guide to the legal meaning<sup>7</sup> of an enactment, the enactment should not be construed without reference to it<sup>8</sup>; indeed to do so would be to contravene the informed interpretation rule<sup>9</sup>.

Many Statute Law Revision Acts have repealed preambles of Acts as being spent, and subsequent, revised, editions of the statutes omit them. By virtue of the Interpretation Act 1978<sup>10</sup> the revised edition of such an Act is to be taken to be the one referred to in any citation; but the repeal of a preamble by a Statute Law Revision Act does not affect the meaning of the Act<sup>11</sup>.

1 As to the nature of a preamble see PARA 1265 ante.

2 Ie by virtue of the functional construction rule: see PARAS 1393, 1402 ante.

3 See 1 Co Inst 79a; *Sussex Peerage Case* (1844) 11 Cl & Fin 85 at 143. See also *Turquand v Board of Trade* (1886) 11 App Cas 286, HL; *Hollinrake v Truswell* [1894] 3 Ch 420 at 427-428; *Powell v Kempton Park Racecourse Co Ltd* [1899] AC 143, HL; *Siu Yin Kwan v Eastern Insurance Co Ltd* [1994] 2 AC 199, [1994] 1 All ER 213, PC.

4 *Stowel v Lord Zouch* (1569) 1 Plowd 353 at 369 per Dyer CJ. See also *Imperial Tobacco Ltd v A-G* [1979] QB 555 at 575, [1979] 2 All ER 592 at 600, CA, per Lord Denning MR.

5 *Olivier v Buttigieg* [1967] AC 115 at 128, [1966] 2 All ER 459 at 461, PC, per Lord Morris of Borth-y-Gest. See also *Siu Yin Kwan v Eastern Insurance Co Ltd* [1994] 2 AC 199 at 211, [1994] 1 All ER 213 at 224, PC, per Lord Lloyd.

6 *A-G v Prince Ernest Augustus of Hanover* [1957] AC 436, [1956] 1 All ER 49, HL; *Manuel v A-G* [1983] Ch 77 at 107, [1982] 3 WLR 821 at 841, CA, per Slade LJ.

7 As to the legal meaning see PARA 1373 ante.

8 For modern cases considering the relevance of preambles see *R v Males* [1962] 2 QB 500, [1961] 3 All ER 705, CCA; *Eton College v Minister of Agriculture, Fisheries and Food* [1964] Ch 274, [1962] 3 All ER 290; *Limb & Co (Stevedores) (a firm) v British Transport Docks Board* [1971] 1 All ER 828, [1971] 1 WLR 311; *Ealing London Borough Council v Race Relations Board* [1972] AC 342 at 361, [1972] 1 All ER 105 at 114, HL, per Lord Simon of Glaisdale; *The Norwhale, John Franetovich & Co (Owners) v Ministry of Defence* [1975] QB 589, [1975] 2 All ER 501; *Quazi v Quazi* [1980] AC 744, [1979] 3 All ER 897, HL; *Allen v Gulf Oil Refining Ltd* [1981] AC 1001, [1981] 1 All ER 353, HL; *Manuel v A-G* [1983] Ch 77, [1982] 3 All ER 822, CA.

9 As to the informed interpretation rule see PARA 1414 post.

10 Ie the Interpretation Act 1978 s 19(1)(a): see PARA 1255 ante.

11 *Powell v Kempton Park Racecourse Co Ltd* [1899] AC 143, HL.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/D. INTERPRETATION BY REFERENCE TO AMENDABLE DESCRIPTIVE COMPONENTS OF ACT/1405. Interpretation by reference to purpose clause.

#### **1405. Interpretation by reference to purpose clause.**

A purpose clause<sup>1</sup> may be used in interpretation<sup>2</sup> so far as, having regard to its function, it provides a reliable guide. It is, however, often unsatisfactory as a guide, as it usually needs to be so compressed and vague in its language as to be of little help in comparison to the precision of the detailed provisions of the Act<sup>3</sup>.

1 As to the nature of a purpose clause see PARA 1266 ante.

2 I.e. by virtue of the functional construction rule: see PARA 1393 ante. See also PARA 1402 ante.

3 The maxim *generalia specialibus non derogant* (general things do not derogate from special things: cf para 1300 ante) applies.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/D. INTERPRETATION BY REFERENCE TO AMENDABLE DESCRIPTIVE COMPONENTS OF ACT/1406. Interpretation by reference to recital.

#### **1406. Interpretation by reference to recital.**

A recital<sup>1</sup> may be used in interpretation<sup>2</sup> so far as, having regard to its function, it provides a reliable guide.

1 As to the nature of a recital see PARA 1267 ante.

2 I.e. by virtue of the functional construction rule: see PARA 1393 ante. See also PARA 1402 ante; and cf para 1404 ante (interpretation by reference to preamble; what is stated therein as to a preamble also applies to a recital).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/D. INTERPRETATION BY REFERENCE TO AMENDABLE DESCRIPTIVE COMPONENTS OF ACT/1407. Interpretation by reference to short title.

#### **1407. Interpretation by reference to short title.**

The short title<sup>1</sup> may be used in interpretation<sup>2</sup> so far as, having regard to its function, it provides a reliable guide. The function of the short title is simply to provide a brief label by which the Act may be referred to, but such limited help as it can give as a guide to legislative intention should not be rejected. Judges sometimes mention the short title as being at least confirmatory of one of the opposing constructions<sup>3</sup>.



1 As to the nature of the short title see PARA 1268 ante.

2 le by virtue of the functional construction rule: see PARA 1393 ante. See also PARA 1402 ante.

3 See eg *Lonrho Ltd v Shell Petroleum Co Ltd (No 2)* [1982] AC 173 at 187, [1981] 2 All ER 456 at 462-463, HL, per Lord Diplock. As to the opposing constructions see PARA 1377 ante.

See also *Re Vexatious Actions Act 1886*, *Re Boaler* [1915] 1 KB 21 at 40, CA, per Scrutton LJ: 'The short title being a label, accuracy may be sacrificed to brevity; but I do not understand on what principle of construction I am not to look at the words of the Act itself to help me understand its scope in order to interpret the words Parliament has used in the circumstances in which they were legislating'. See also, to like effect, *Middlesex Justices v R* (1884) 9 App Cas 757 at 772, HL, per Lord Selborne LC; *R v Wheatley* [1979] 1 All ER 954 at 957, [1979] 1 WLR 144 at 147, CA, per Bridge LJ. It seems that former dicta suggesting that for purposes of interpretation the short title is to be disregarded must now themselves be disregarded: see eg *Vacher & Sons Ltd v London Society of Compositors* [1913] AC 107 at 114, HL, per Lord Haldane LC, and at 128 per Lord Moulton; *National Telephone Co Ltd v HM Postmaster-General* [1913] AC 546 at 560, HL, per Lord Moulton; *Re Vexatious Actions Act 1896*, *Re Boaler* supra at 27 per Buckley LJ and at 35 per Kennedy LJ.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/D. INTERPRETATION BY REFERENCE TO AMENDABLE DESCRIPTIVE COMPONENTS OF ACT/1408. Interpretation by reference to example.

#### **1408. Interpretation by reference to example.**

An example in an Act<sup>1</sup> may be used in interpretation<sup>2</sup> so far as, having regard to its function, it provides a reliable guide. If Parliament includes in an Act examples of how it is intended to operate, these are of strong persuasive authority<sup>3</sup>. Where statutory examples are given it is the duty of the court to accept their guidance, and an example should not be rejected on the ground that it is repugnant to the operative provisions of the Act unless this is unavoidable<sup>4</sup>.

If an example contradicts the clear meaning of the enactment the latter is accorded preference, it being assumed in the absence of indication to the contrary that the framer of the example was in error<sup>5</sup>. A repugnant example cannot in itself justify departure from the literal meaning of an operative provision<sup>6</sup>.

1 As to the nature of an example in an Act see PARA 1269 ante.

2 le by virtue of the functional construction rule: see PARA 1393 ante. See also PARA 1402 ante.

3 Judges have welcomed the assistance given by statutory examples. 'One of the best ways, I find, of understanding a statute is to take some specific instances which, by common consent, are intended to be covered by it. This is especially the case with a Finance Act. I cannot understand it by simply reading it through. But when an instance is given, it becomes plain. I can say at once: 'Yes, that is the sort of thing Parliament intended to cover'': *Escoigne Properties Ltd v IRC* [1958] AC 549 at 565-566, [1958] 2 WLR 336 at 347, CA, per Lord Denning MR. See also *London Transport Executive v Betts* [1959] AC 213 at 240, [1958] 2 All ER 636 at 651, HL, per Lord Denning.

4 'The great usefulness of the illustrations, which have, though not part of the sections, been expressly furnished by the legislature as helpful in the working and application of the statute, should not be...impaired': *Mahomed Syedol Ariffin v Yeoh Ooi Gark* [1916] 2 AC 575 at 581, PC. As to the effect of the examples set out in the Sex Discrimination Act 1975 s 29(2) see *Amin v Entry Clearance Officer, Bombay* [1983] 2 AC 818 at 834, [1983] 2 All ER 864 at 872, HL, per Lord Fraser of Tullybelton ('I accept that the examples in [the Sex Discrimination Act 1975] s 29(2) are not exhaustive, but they are, in my opinion, useful pointers to aid in the construction of s 29(1)'). See also *Kassam v Immigration Appeal Tribunal* [1980] 2 All ER 330 at 334, sub nom *R v Immigration Appeal Tribunal, ex p Kassam* [1980] 1 WLR 1037 at 1043, CA.

5 This does not, however, mean that the 'clear' meaning will always be followed. There are cases when the court will apply a strained construction, and an example may support the reasons for doing so.

6 *Mahomed Syedol Ariffin v Yeoh Ooi Gark* [1916] 2 AC 575 at 581, PC. See also the Consumer Credit Act 1974 s 188(3), which expresses the general rule.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/E. INTERPRETATION BY REFERENCE TO UNAMENDABLE DESCRIPTIVE COMPONENTS OF ACT/1409. Interpretative significance of unamendable descriptive components of an Act.

### ***E. INTERPRETATION BY REFERENCE TO UNAMENDABLE DESCRIPTIVE COMPONENTS OF ACT***

#### **1409. Interpretative significance of unamendable descriptive components of an Act.**

The significance of unamendable descriptive components of an Act<sup>1</sup> in interpretation lies in the fact that they are the portions of the Act which describe, in ways which were not subject to formal amendment in Parliament, the portions in which the legislative message principally resides<sup>2</sup>.

1 As to the nature of unamendable descriptive components see PARA 1270 ante.

2 I.e. the operative components: see PARA 1397 et seq ante. As to the detailed significance of specific components see PARAS 1410 (chapter number), 1411 (heading), 1412 (sidenote) and 1413 (punctuation) post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/E. INTERPRETATION BY REFERENCE TO UNAMENDABLE DESCRIPTIVE COMPONENTS OF ACT/1410. Interpretation by reference to chapter number.

#### **1410. Interpretation by reference to chapter number.**

The chapter number<sup>1</sup> may be used in interpretation<sup>2</sup> so far as, having regard to its function, it provides a reliable guide. Its only significance for statutory interpretation is in determining which of two Acts receiving royal assent on the same date is to be treated as the first in time. Where two Acts passed on the same day are inconsistent, the chapter numbers indicate which of them, being deemed the later, is to prevail as, by implication, it repeals the earlier Act to the extent of the inconsistency<sup>3</sup>.

1 As to the nature of the chapter number of an Act see PARA 1271 ante.

2 I.e. by virtue of the functional construction rule: see PARA 1393 ante. See also PARA 1409 ante.

3 As to implied repeal see PARA 1299 et seq ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/E. INTERPRETATION BY REFERENCE TO UNAMENDABLE DESCRIPTIVE COMPONENTS OF ACT/1411. Interpretation by reference to heading.

#### **1411. Interpretation by reference to heading.**

A heading<sup>1</sup> may be used in interpretation<sup>2</sup>, but only so far as it provides a reliable guide to the material to which it is attached. Its function is merely to serve as a brief, and therefore necessarily inaccurate, description of that material<sup>3</sup>. It is nevertheless the court's duty to take advantage of this aid where appropriate in determining the legal meaning of an enactment<sup>4</sup>.

Where a heading differs from the material it describes, the court is put on inquiry, but it is unlikely to be right for the plain, literal meaning of the words of an enactment to be overridden purely by reason of a heading<sup>5</sup>. Where, however, general words are given a heading indicating a narrower scope, it may be proper to treat them as cut down by the heading<sup>6</sup>.

A heading can only describe approximately the provisions to which it is attached, and it may not cover all the detailed matters falling within them, or may not be altered when an amendment made in Parliament to those provisions would require or justify its alteration<sup>7</sup>.

1 As to the nature of a heading see PARA 1275 ante. See also PARA 1399 note 3 ante.

2 Ie by virtue of the functional construction rule: see PARA 1393 ante. See also PARA 1409 ante.

3 *DPP v Schildkamp* [1971] AC 1 at 10, [1969] 3 All ER 1640 at 1641, HL, per Lord Reid.

4 *Dixon v BBC* [1979] QB 546 at 552, [1979] 2 All ER 112 at 116, CA, per Shaw LJ ('it is requisite to look at the heading'); *Customs and Excise Comrs v Mechanical Services (Trailer Engineers) Ltd* [1979] 1 All ER 501 at 508-509, [1979] 1 WLR 305 at 314, CA, per Waller LJ; *Lloyds Bank Ltd v Secretary of State for Employment* [1979] 2 All ER 573 at 580, [1979] 1 WLR 498 at 506, EAT; *Re Phelps decd* [1980] Ch 275 at 281, [1979] 3 All ER 373 at 377, CA, per Buckley LJ; *R v Jones (Terence Michael)* (1994) Times, 19 August, CA. As to the duty to arrive at the legal meaning see PARA 1373 ante.

5 See eg *Fitzgerald v Hall Russell & Co Ltd* [1970] AC 984 at 1000, [1969] 3 All ER 1140 at 1149, HL, per Lord Upjohn.

6 *Inglis v Robertson and Baxter* [1898] AC 616 at 624, 630, HL.

7 'A cross-heading ought to indicate the scope of the sections which follow it but there is always a possibility that the scope of one of these sections may have been widened by amendment': *DPP v Schildkamp* [1971] AC 1 at 10, [1969] 3 All ER 1640 at 1641, HL, per Lord Reid.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/E. INTERPRETATION BY REFERENCE TO UNAMENDABLE DESCRIPTIVE COMPONENTS OF ACT/1412. Interpretation by reference to sidenote.

#### **1412. Interpretation by reference to sidenote.**

A sidenote<sup>1</sup> (or marginal note) may be used in interpretation<sup>2</sup>, but only so far as it provides a reliable guide<sup>3</sup>. This means that due account must be taken of the fact that its function is merely to serve as a brief, and therefore necessarily inaccurate, description of the material to which it

is attached<sup>4</sup>. It is the court's duty to take advantage of this aid where appropriate in arriving at the legal meaning of an enactment<sup>5</sup>. Sometimes a drafter will use a sidenote to name some concept dealt with in the section which may throw light on his intention<sup>6</sup>.

If the sidenote contradicts the text, this puts the interpreter on inquiry; but the drafter may have chosen an inadequate signpost, or failed to alter the sidenote to match an amendment made to the clause during the passage of the Bill<sup>7</sup>. Such facts are outside the knowledge of the interpreter, who must therefore adopt a rule which does not depend on them<sup>8</sup>.

1 As to the nature of a sidenote see PARA 1276 ante.

2 le by virtue of the functional construction rule: see PARA 1393 ante; and see PARA 1409 ante.

3 'A sidenote is a poor guide to the scope of a section, for it can do no more than indicate the main subject with which the section deals': *DPP v Schildkamp* [1971] AC 1 at 10, [1969] 3 All ER 1640 at 1641, HL, per Lord Reid.

4 See *Stephens v Cuckfield RDC* [1960] 2 QB 373 at 383, [1960] 2 All ER 716 at 720, CA, per Upjohn LJ ('While the marginal note to a section cannot control the language used in the section, it is at least permissible to approach a consideration of its general purpose and the mischief at which it is aimed with the sidenote in mind'). This dictum was applied in *Tudor Grange Holdings Ltd v Citibank NA* [1992] Ch 53 at 66, [1991] 4 All ER 1 at 13. The final words accurately show the application of the informed interpretation rule to this component (see PARA 1414 post); and see *Pilkington Bros v IRC* [1982] 1 All ER 715 at 723, [1982] 1 WLR 136 at 145, HL, per Lord Bridge ('Assuming that sidenotes are entitled to any weight in the construction of the enacting words of a statute, it is clear to my mind that they cannot here sustain the weight of [counsel's] far-fetched argument'). A sidenote, however, can only be an approximate guide to the material to which it is attached, and may not cover all the detailed matters falling within the section to which it is attached.

5 As to the legal meaning see PARA 1373 ante.

6 See eg *R v Harbax Singh* [1979] QB 319 at 321-322, [1979] 1 All ER 524 at 525, CA, per Roskill LJ.

7 Cf para 1275 note 6 ante (amendments of headings). In *Statutes in Force*, sidenotes that have become inappropriate as the result of amendments to the section are indicated by a dagger. In previous revised editions of the Acts the sidenotes were amended where necessary. As to revised editions of the Acts see PARA 1251 ante.

8 See *Page (Inspector of Taxes) v Lowther* (1983) 57 TC 199, CA, per Slade LJ (where 'full regard' was had to the sidenote to the Income and Corporation Taxes Act 1970 s 488 (repealed) ('Artificial transactions in land'), but it was nevertheless held that a non-artificial transaction fell within the section; the sidenote was 'somewhat misleading' and, as a brief précis of the section 'a most unsure guide to its construction'). In *Chilcott v IRC* (1981) 55 TC 446 at 475, [1982] STC 1 at 23, however, Vinelott J considered that this sidenote was a permissible and useful guide that threw light on the mischief at which the section was aimed. In the Income and Corporation Taxes Act 1988 s 776, which replaced the provision in question, the sidenote reads 'Transactions in land; taxation of capital gains'. Reliance was placed on sidenotes in *Nicholson v Fields* (1862) 31 LJ Ex 233 at 236; *Sheffield Waterworks Co v Bennett* (1872) LR 7 Exch 409 at 421; *Bushell v Hammond* [1904] 2 KB 563 at 567, CA; *Bennett v Markham* [1982] 3 All ER 641, [1982] 1 WLR 1230, DC. See also *Stephens v Cuckfield RDC* [1960] 2 QB 373 at 383, [1960] 2 All ER 716 at 720, CA, per Upjohn LJ; *Re Cohen (a bankrupt), ex p The Bankrupt v The Trustee of The Property of the Bankrupt, ex p Trustee of The Property of The Bankrupt v The Bankrupt* [1961] Ch 246 at 266-267, [1961] 1 All ER 646 at 656, CA, per Upjohn LJ; *Limb & Co (Stevedores) (a firm) v British Transport Docks Board* [1971] 1 All ER 828, [1971] 1 WLR 311; and see also *Re Phelps decd* [1980] Ch 275 at 281, [1979] 3 All ER 373 at 377, CA.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iii) The Functional Construction Rule/E. INTERPRETATION BY REFERENCE TO UNAMENDABLE DESCRIPTIVE COMPONENTS OF ACT/1413. Interpretation by reference to punctuation.

#### **1413. Interpretation by reference to punctuation.**

Punctuation<sup>1</sup> may be used in interpretation<sup>2</sup>, but only so far as it provides a reliable guide. Punctuation generally carries little weight, as it is not a device for making meaning, but rather a way of making meaning plain. The sense of an Act should be the same with or without it, and drafters are instructed that they should on no account allow the meaning to turn on the presence or absence of a punctuation mark. The good drafter consciously drafts every clause with an eye to what its sense would be if all such marks were removed<sup>3</sup>; but even in modern Acts the presence or absence of commas can make a difference to the legal meaning<sup>4</sup>, and the importance of punctuation is increased when the alternative versions differ widely in meaning<sup>5</sup>. Nevertheless, because punctuation ought not to make any difference to the grammatical meaning, it can assist in cases of doubt to read the words of the enactment without the punctuation provided<sup>6</sup>.

The need for an updating construction where relevant<sup>7</sup> applies to punctuation. Fashions in punctuation change, so an Act should be construed with regard to the fashion prevailing when it was passed<sup>8</sup>.

1 As to an Act's punctuation see PARA 1277 ante.

2 Ie by virtue of the functional construction rule: see PARA 1393 ante. See also PARA 1409 ante.

3 Current judicial opinion, however, accepts the view that 'punctuation.... may be of the highest importance in suggesting one interpretation and concealing another': see Sir RE Megarry V-C, 'Copulatives and Punctuation in Statutes', 75 LQR 29 at 30-31. See also *Slaney (Inspector of Taxes) v Kean* [1970] Ch 243 at 252 [1969] 3 WLR 240 at 248 per Megarry J; and see *Houston v Burns* [1918] AC 337 at 348 per Lord Shaw of Dunfermline ('Punctuation is a rational part of English composition and is sometimes quite significantly employed. I see no reason for depriving legal documents of such significance as attaches to punctuation in other writings'). See also, to like effect, *Gauntlett v Carter* (1853) 17 Beav 586 at 591 (where commas were held 'a circumstance of importance'); *Slaney (Inspector of Taxes) v Kean* [1970] 1 Ch 243 at 252, [1970] 1 All ER 434 at 441 per Megarry J; *Hanlon v The Law Society* [1981] AC 124 at 197-199, [1980] 2 All ER 199 at 221, HL, per Lord Lowry; *Marshall v Cottingham* [1982] Ch 82 at 86-88, [1981] 3 All ER 8 at 11-12 per Sir Robert Megarry V-C. It appears that earlier dicta suggesting that for purposes of interpretation punctuation is to be disregarded as not part of an Act must now be disregarded: see eg *Stephenson v Taylor* (1861) 1 B & S 95 at 106; *R v Casement* [1917] 1 KB 98 at 123, CCA; *IRC v Hinchy* [1960] AC 748 at 765, [1960] 1 All ER 505 at 510, HL; *R v Governor of Brixton Prison, ex p Naranjan Singh* [1962] 1 QB 211, [1961] 2 All ER 565, DC; *Luby v Newcastle-under-Lyme Corpn* [1965] 1 QB 214, [1964] 3 All ER 169, CA.

4 See eg *Bodden v Metropolitan Police Comr* [1990] 2 QB 397, [1990] 3 All ER 833, CA. As to the legal meaning of an enactment see PARA 1373 ante.

5 See eg *Barrow v Wadkin (No 2)* (1857) 24 Beav 327.

6 Thus doubt is less likely to be attributed to punctuation when in fact it arises from the choice or order of the words: see R Cross, *Statutory Interpretation* (1st Edn, 1976) pp 114-115; P B Maxwell, *The Interpretation of Statutes* (12th Edn, 1969) p 14, when compared to *Luby v Newcastle-under-Lyme Corpn* [1965] 1 QB 214, [1964] 3 All ER 169, CA and *R v Governor of Brixton Prison, ex p Naranjan Singh* [1962] 1 QB 211, [1961] 2 All ER 565, CA.

7 See PARA 1473 post.

8 See eg *Moore v Hubbard* [1935] VLR 93.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iv) The Informed Interpretation Rule/A. STATEMENT OF THE INFORMED INTERPRETATION RULE/1414. The informed interpretation rule.

#### **(iv) The Informed Interpretation Rule**

##### **A. STATEMENT OF THE INFORMED INTERPRETATION RULE**

#### 1414. The informed interpretation rule.

The informed interpretation rule<sup>1</sup> is a rule under common law that the court must infer that the legislator, when settling the wording of an enactment<sup>2</sup>, intended it to be given a fully informed, rather than a purely literal, interpretation<sup>3</sup>. Accordingly, the court does not decide whether or not there is any real doubt<sup>4</sup> as to the legal meaning of the enactment<sup>5</sup>, and if so in what way to resolve it, until it has first discerned and considered, in the light of the facts to which the enactment is being applied<sup>6</sup>, the context of that enactment, including all such matters as may illumine the text and make clear the meaning intended by the legislator in the factual situation of the instant case<sup>7</sup>.

For this purpose Parliament intends that the court will permit the citation, whether unconditionally or *de bene esse*<sup>8</sup>, of any publicly available material which it considers it proper to admit and consider having regard to the interpretative criteria<sup>9</sup>.

Additionally, the informed interpretation rule requires that, when construing an enactment as it applies to the facts of the instant case, attention should be paid to any relevant aspects of (1) the state of the law before the Act containing the enactment was passed; (2) the history of the enacting of that Act; and (3) the events which occurred in relation to the Act subsequent to its passing<sup>10</sup>. These may be described collectively as the legislative history of the enactment, and individually as the pre-enacting<sup>11</sup>, enacting<sup>12</sup>, and post-enacting<sup>13</sup> history.

1 As to the basic rule of statutory interpretation see PARA 1376 ante.

2 As to the nature of an enactment see PARA 1232 ante.

3 A fully informed and a literal meaning usually, though by no means always, produce the same result. As to the literal meaning see PARA 1470 post.

4 As to when there is real doubt see PARA 1374 ante.

5 As to the legal meaning see PARA 1373 ante.

6 In order to determine the legal meaning of an enactment in a particular case it is necessary to know the relevant facts, since it is on these that the parties submit to the court their opposing constructions of the enactment. As to the opposing constructions see PARA 1377 ante.

7 See *River Wear Comrs v Adamson*(1877) 2 App Cas 743 at 763, HL, per Lord Blackburn ('from the imperfection of language, it is impossible to know what [Parliament's] intention is without inquiring further, and seeing what the circumstances were with reference to which the words were used, and what was the object, appearing from those circumstances, which the person using them had in view').

8 Where the court is doubtful of the admissibility of any contextual material, it may allow it to be cited *de bene esse* pending a decision on admissibility: *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG*[1975] AC 591 at 644, [1975] 1 All ER 810 at 841, HL, per Lord Simon of Glaisdale.

9 As to the interpretative criteria see PARA 1375 ante.

10 *Beswick v Beswick*[1968] AC 58 at 73-74, [1967] 2 All ER 1197 at 1202, HL, per Lord Reid; *R v Sheppard*[1981] AC 394 at 414-415, [1980] 3 All ER 899 at 910-911, HL, per Lord Fraser of Tullybelton, and at 420-421 and 915-916 per Lord Reid; *Lilley v Public Trustee of the Dominion of New Zealand*[1981] AC 839, [1981] 2 WLR 661, PC; *Thompson v Brown Construction (Ebbw Vale) Ltd*[1981] 2 All ER 296, [1981] 1 WLR 744, HL; *R v Raymond*[1981] QB 910, [1981] 2 All ER 246, CA.

11 See PARA 1415 et seq post.

12 See PARA 1419 et seq post.

13 See PARA 1427 et seq post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iv) The Informed Interpretation Rule/B. INFORMED INTERPRETATION BY USE OF LEGISLATIVE HISTORY/(a) Pre-enacting History/1415. Nature of pre-enacting history.

## **B. INFORMED INTERPRETATION BY USE OF LEGISLATIVE HISTORY**

### **(A) PRE-ENACTING HISTORY**

#### **1415. Nature of pre-enacting history.**

The court cannot judge soundly what mischief an enactment is intended to remedy<sup>1</sup> unless it knows the previous state of the law, the defects found to exist in that law, and the facts that caused the legislator to pass the Act in question<sup>2</sup>. It follows that the court should take into account the state of the law at the time the enactment was passed<sup>3</sup>. Where a subject has been dealt with by a developing series of Acts, the courts often find it necessary, in construing the latest Act, to trace the course of this development. By seeing what changes have been made in the relevant provision, and why they have been made, the court can better assess the meaning of the current Act<sup>4</sup>.

1 As to construction by reference to the mischief see PARA 1474 post.

2 See *IRC v Joiner*[1975] 3 All ER 1050 at 1059, [1975] 1 WLR 1701 at 1710, HL, per Lord Diplock (context is whole corpus of pre-existing law).

3 *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG*[1975] AC 591 at 637, [1975] 1 All ER 810 at 835, HL, per Lord Diplock. See also *Vacher & Sons Ltd v London Society of Compositors*[1913] AC 107 at 113; *Assam Railway and Trading Co Ltd v IRC*[1935] AC 445 at 457-459; *Boy Andrew (Owners) v St Rognvald (Owners)*[1948] AC 140 at 149, HL; *Devine v A-G for Northern Ireland* [1992] 1 All ER 609, sub nom *R v A-G for Northern Ireland, ex p Devine* [1992] 1 WLR 262, HL; *Burton v Islington Health Authority*[1993] QB 204 at 213, [1992] 3 WLR 637 at 634. Under the doctrine of judicial notice (see PARA 1352 ante), the court is taken to know the relevant law, past and present, prevailing within its jurisdiction. Accordingly there can be no restriction on the sources available to the court for reminding itself as to the content of any rule of law which prevails, or has prevailed, there.

4 See eg *United States of America Government v Jennings* [1983] 1 AC 624 at 641, sub nom *Jennings v United States Government*[1982] 3 All ER 104 at 114-115, HL, per Lord Roskill. As to consolidation Acts see PARA 1225 ante; as to codifying Acts see PARA 1226 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iv) The Informed Interpretation Rule/B. INFORMED INTERPRETATION BY USE OF LEGISLATIVE HISTORY/(a) Pre-enacting History/1416. Presumption that words are used in previous sense.

#### **1416. Presumption that words are used in previous sense.**

Where an Act uses a form of words with a previous legal history, this may be relevant in interpretation, the question being whether or not Parliament intended to use the term in the sense given by this earlier history. The presumption is that it did<sup>1</sup>; and this presumption is strengthened if the two enactments are contained in Acts which are in *pari materia*<sup>2</sup>. The doctrine of precedent<sup>3</sup> operates independently of, but often concurrently with, this guide to

construction<sup>4</sup>. The meaning of a word in a new Act should not, however, be 'cluttered with ancient baggage', particularly when this would not leave that meaning as something which the ordinary person would understand it to be<sup>5</sup>.

1 *London Corpn v Cusack-Smith* [1955] AC 337 at 361, [1955] 1 All ER 302 at 314, HL, per Lord Reid. This presumption is known as the *Barras* principle, after *Barras v Aberdeen Steam Trawling and Fishing Co Ltd* [1933] AC 402 at 411, HL: see *EWP Ltd v Moore* [1992] QB 460 at 467, [1992] 1 All ER 880 at 885, CA. See also *A-G v Brotherton* [1991] Ch 185 at 199, [1991] 2 WLR 1 at 13, CA (revsd [1992] AC 425, [1992] 1 All ER 230); *Stubbings v Webb* [1993] AC 498 at 506-508, [1993] 1 All ER 322 at 328-330, HL; Broom, *Legal Maxims* (10th Edn, 1939) p 395.

2 *Barras v Aberdeen Steam Trawling and Fishing Co* [1933] AC 402 at 446-447, HL; *Robinson Bros (Brewers) Ltd v Durham County Assessment Committee Area No 7* [1938] AC 321 at 340, [1938] 2 All ER 79 at 87, HL; *Farrell v Alexander* [1977] AC 59 at 74, [1976] 2 All ER 721 at 727, HL, per Lord Wilberforce; *R v Sheppard* [1981] AC 394 at 407, [1980] 3 All ER 899 at 906, HL, per Lord Diplock. See also *Earl of Waterford's Claim* (1832) 6 Cl & Fin 133 at 172, HL; *Dun v Dun* [1959] AC 272 at 292, [1959] 2 All ER 134 at 142-143, PC; *Mansell v R* (1857) 8 E & B 54 at 73; *Cope v Doherty* (1858) 2 De G & J 614 at 624-625; *Jones v Mersey Docks and Harbour Board* (1865) 11 HL Cas 443 at 480-481; *Mulcahy v R* (1868) LR 3 HL 306 at 319-320; *Re Cathcart, ex p Campbell* (1870) 5 Ch App 703 at 706; *Greaves v Tofield* (1880) 14 ChD 563 at 571, CA; *Barlow v Teal* (1885) 15 QBD 403 at 404-405, DC (affd (1885) 15 QBD 501, CA); *Dyke v Gower* [1892] 1 QB 220 at 225, DC; *Jay v Johnstone* [1893] 1 QB 25 at 28, DC; *Harding v Queensland Stamps Comrs* [1898] AC 769 at 774, PC; *North British Ry Co v Budhill Coal and Sandstone Co* [1910] AC 116 at 127, HL; *Young v Gentle* [1915] 2 KB 661 at 669; *R v Barnsley Licensing Justices, ex p Barnsley and District Licensed Victuallers' Assocn* [1960] 2 QB 167 at 178-185, [1960] 2 All ER 703 at 709-713, CA; *Findlow v Lewis* [1963] 1 QB 151 at 162, [1962] 3 All ER 7 at 11, DC; *R v Freeman* [1970] 2 All ER 413, [1970] 1 WLR 788, CA; *Williams v Home Office (No 2)* [1982] 2 All ER 564 at 569, CA, per Brightman LJ. Cf para 1485 post. As to Acts in pari materia see PARA 1220 ante.

3 As to the doctrine of precedent see PARA 1350 ante.

4 See eg *Re Yeovil Glove Co Ltd* [1965] Ch 148 at 175, [1964] 2 All ER 849 at 855, CA, per Harman LJ; *R v Bow Road Justices (Domestic Proceedings Court), ex p Adedigba* [1968] 2 QB 572 at 583, [1968] 2 All ER 89 at 95, CA, per Salmon LJ; *Merton London Borough Council v Gardiner* [1981] QB 269 at 289, [1981] ICR 186 at 206, CA.

5 See *Firstpost Homes Ltd v Johnson* (1995) Times, 14 August, CA.

## UPDATE

### 1416 Presumption that words are used in previous sense

TEXT AND NOTES--Where an Act has been interpreted in a particular way without dissent over a long period, it is not appropriate to adopt a novel approach to its interpretation: *Isle of Anglesey CC v The Welsh Ministers* [2009] EWCA Civ 94, [2010] QB 163, [2009] 3 All ER 1110.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iv) The Informed Interpretation Rule/B. INFORMED INTERPRETATION BY USE OF LEGISLATIVE HISTORY/(a) Pre-enacting History/1417. Construction of consolidation Acts.

### 1417. Construction of consolidation Acts.

Initially a consolidation Act<sup>1</sup> is to be construed in the same way as any other Act. If, however, a real doubt as to its meaning arises<sup>2</sup> the following rules apply:



- (1) unless the contrary intention appears, an Act stated in its long title<sup>3</sup> to be a consolidation Act is presumed not to be intended to change the law, and so its words must be construed exactly as if they remained in the earlier Act<sup>4</sup>;
- (2) the above presumption means that in case of real doubt the earlier law may be considered<sup>5</sup>, even if the words are not identical<sup>6</sup>;
- (3) in so far as the Act constitutes consolidation with amendments, its words are to be construed as if they were contained in an ordinary amending Act<sup>7</sup>; and
- (4) if there is inconsistency in the sections of a consolidation Act it may be necessary to look at the respective dates of their first enactment to explain the inconsistency<sup>8</sup>.

1 As to the nature of a consolidation Act see PARA 1225 ante.

2 As to cases of real doubt see PARA 1374 ante.

3 As to the long title of an Act see PARA 1264 ante.

4 *Mitchell v Simpson* (1890) 25 QBD 183 at 190, CA; *Gilbert v Gilbert and Boucher* [1928] P 1 at 7-8, CA; *Nottinghamshire County Council v Middlesex County Council* [1936] 1 KB 141 at 145, DC; *Beswick v Beswick* [1968] AC 58, [1967] 2 All ER 1197, HL; *DPP v Schildkamp* [1971] AC 1, [1969] 3 All ER 1640, HL; *Atkinson v United States of America Government* [1971] AC 197, [1969] 3 All ER 1317, HL; *Maunsell v Olins* [1975] AC 373 at 382, [1975] 1 All ER 16 at 17, HL; *Edwards (Inspector of Taxes) v Clinch* [1981] Ch 1 at 5, [1980] 3 All ER 278 at 280, CA, per Buckley LJ (affd [1982] AC 845, [1981] 3 All ER 543, HL).

This presumption applies so far as it appears that the Act consists of 'straight' consolidation (see PARA 1225 ante); but must yield to plain words to the contrary (*Inglis v Robertson* [1898] AC 616 at 624, HL; *MacConnell v E Prill & Co Ltd* [1916] 2 Ch 57 at 63; *Gilbert v Gilbert and Boucher* [1928] P 1 at 8, CA; *Grey v IRC* [1960] AC 1 at 13, [1959] 3 All ER 603 at 606, HL; *Beswick v Beswick* [1968] AC 58 at 79, [1967] 2 All ER 1197 at 1206, HL, per Lord Hodson, and at 84 and 1209 per Lord Guest).

5 *Farrell v Alexander* [1977] AC 59 at 73, [1976] 2 All ER 721 at 726, HL, per Lord Wilberforce; *Cullen v Rogers* [1982] 2 All ER 570 at 574, [1982] 1 WLR 729 at 743, HL. See also *Mitchell v Simpson* (1890) 25 QBD 183 at 190, CA, per Lord Esher; *Smith v Baker & Sons* [1891] AC 325 at 349, HL; *Barentz (Inspector of Taxes) v Whiting* [1965] 1 All ER 685, [1965] 1 WLR 433, CA; *Maunsell v Olins* [1975] AC 373 at 382, [1975] 1 All ER 16 at 17, HL, per Lord Reid, and at 392 and 27 per Lord Simon of Glaisdale; *R v Sheppard* [1981] AC 394, [1980] 3 All ER 899, HL; *R v Heron* [1982] 1 All ER 993, [1982] 1 WLR 451, HL; *R v West Yorkshire Coroner, ex p Smith* [1983] QB 335, [1982] 3 All ER 1098, CA.

6 *Re A Solicitor* [1956] 1 QB 155 at 167, [1955] 3 All ER 305 at 313. It is possible for it to be the scrutiny of the earlier law which itself raises the doubt. The courts tend to discourage investigation of the earlier law: see *IRC v Joiner* [1975] 3 All ER 1050, [1975] 1 WLR 1701, HL; *Metropolitan Police Comr v Curran* [1976] 1 All ER 162, [1976] 1 WLR 87, HL; *Farrell v Alexander* [1977] AC 59, [1976] 2 All ER 721, HL, especially at 73 and 726 per Lord Wilberforce, who deprecated the courts' previous willingness to investigate the antecedents of consolidation Acts; *Johnson v Moreton* [1980] AC 37 at 56, [1978] 3 All ER 37 at 46, HL, per Lord Hailsham of St Marylebone LC, and at 62 and 51 per Lord Simon of Glaisdale; *R v West Yorkshire Coroner, ex p Smith* [1983] QB 335 at 355, [1982] 3 All ER 1098 at 1104, CA, per Lord Lane CJ. However, it is recognised that consideration of antecedents may be necessary for the purpose of establishing an Act's historical and social context and therefore the relevant statutory objective: see *Farrell v Alexander* [1977] AC 59 at 84, [1976] 2 All ER 721 at 735, HL, per Lord Simon of Glaisdale; and *Johnson v Moreton* supra.

7 In such cases the rules regarding 'straight' consolidation apply only to provisions unaffected by such amendments: see *Atkinson v United States of America Government* [1971] AC 197 at 249, [1969] 3 All ER 1317 at 1336, HL, per Lord Upjohn; *Metropolitan Police Comr v Curran* [1976] 1 All ER 162 at 165, [1976] 1 WLR 87 at 90, HL, per Lord Diplock; *Farrell v Alexander* [1977] AC 59 at 83, [1976] 2 All ER 721 at 734, HL, per Lord Simon of Glaisdale; *R v Heron* [1982] 1 All ER 993 at 999, [1982] 1 WLR 451 at 459, HL, per Lord Scarman. These passages indicate that where appropriate the court will be able to use the relevant Lord Chancellor's Memorandum under the Consolidation of Enactments (Procedure) Act 1949 (see PARA 1247 ante) or Law Commission report (see PARA 1225 ante) to ascertain that no relevant alterations to the existing law were thereby introduced and for other purposes of interpretation. Cf *H v H* [1966] 3 All ER 560 at 566 per Sir Jocelyn Simon P.

8 *Higgs and Hill v Stepney Borough Council* [1914] 1 KB 505 at 510, DC. Where provisions of a consolidation Act have their origin in different items of legislation, the same word may bear different meanings in different provisions: see PARA 1485 post.

## UPDATE

### 1417 Construction of consolidation Acts

NOTE 6--See *Johnson (Inspector of Taxes) v The Prudential Assurance Co Ltd* [1996] STC 647 (ambiguous or obscure provisions, falling within first exception to exclusionary rule formulated in *Pepper v Hart* (see PARA 1421) gave rise to real and substantial difficulty or ambiguity and entitled court to seek assistance from parliamentary materials and antecedents of consolidation Act).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iv) The Informed Interpretation Rule/B. INFORMED INTERPRETATION BY USE OF LEGISLATIVE HISTORY/(a) Pre-enacting History/1418. Construction of codifying Acts.

### 1418. Construction of codifying Acts.

In construing a codifying Act<sup>1</sup> the proper course is, in the first instance, to examine its language and to ask what is its natural meaning<sup>2</sup>. The object of a codifying Act has been said to be that on any point specifically dealt with by it the law should be ascertained by interpreting the language used, instead of roaming over a number of authorities<sup>3</sup>. After the language has been examined without presumptions, resort may be had to the previous state of the law only on some special ground, for example for the construction of provisions of doubtful import, or of words which have acquired a technical meaning<sup>4</sup>. These principles have been applied to the Bills of Exchange Act 1882<sup>5</sup>, the Sale of Goods Act 1893<sup>6</sup>, and the Marine Insurance Act 1906<sup>7</sup>.

1 As to the nature of a codifying Act see PARA 1226 ante.

2 It is an inversion of the proper order of consideration to start by inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear interpretation in conformity with this view: *Bank of England v Vagliano Bros* [1891] AC 107 at 144, HL; *Robinson v Canadian Pacific Rly Co* [1892] AC 481, PC; *Bristol Tramways etc Carriage Co Ltd v Fiat Motors Ltd* [1910] 2 KB 831 at 836, CA; *Hall v Hayman* [1912] 2 KB 5 at 12; *R v Fulling* [1987] QB 426, [1987] 2 All ER 65, CA; *R v Smurthwaite* [1994] 1 All ER 898 at 902, 98 Cr App Rep 228 at 233, CA, per Lord Taylor CJ. Cf *British Homes Assurance Corp Ltd v Paterson* [1902] 2 Ch 404, where the Partnership Act 1890 was held to be declaratory only of some of the principles of law relating to principal and agent, so that the case was to be decided by reference to other such principles.

3 *Bank of England v Vagliano Bros* [1891] AC 107 at 145, HL; *Robinson v Canadian Pacific Rly Co* [1892] AC 481, PC.

4 *Bank of England v Vagliano Bros* [1891] AC 107 at 145, HL; *Wimble, Sons & Co v Rosenberg & Sons* [1913] 3 KB 743 at 762, CA; *Yorkshire Insurance Co Ltd v Nisbet Shipping Co Ltd* [1962] 2 QB 330 at 343, [1961] 2 All ER 487 at 492 per Diplock J.

5 See *Bank of England v Vagliano Bros* [1891] AC 107 at 145, HL.

6 See *Abbott & Co v Wolsey* [1895] 2 QB 97, CA; *Bristol Tramways etc Carriage Co Ltd v Fiat Motors Ltd* [1910] 2 KB 831 at 836, CA. The Sale of Goods Act 1893 has now been repealed and replaced by the Sale of Goods Act 1979, a consolidating Act. See also the Sale and Supply of Goods Act 1994.

7 See *Hall v Hayman* [1912] 2 KB 5 at 14, where it was held that a provision of the Act embodied the law as declared by the Court of Appeal before the passing of the Act, although the Court of Appeal had subsequently been reversed by the House of Lords. See also INSURANCE vol 25 (2003 Reissue) PARA 473. See further *Pollurian SS Co Ltd v Young* [1915] 1 KB 922, CA; *British and Foreign Marine Insurance Co Ltd v Samuel Sanday & Co* [1916] 1 AC 650 at 673, HL; *Yorkshire Insurance Co Ltd v Nisbet Shipping Co Ltd* [1962] 2 QB 330,

[1961] 2 All ER 487. The last two cases contain erroneous references to the Marine Insurance Act 1906 being a consolidation Act; as to the informed interpretation of such Acts see PARA 1417 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iv) The Informed Interpretation Rule/B. INFORMED INTERPRETATION BY USE OF LEGISLATIVE HISTORY/(b) Enacting History/1419. Nature of enacting history.

## (B) ENACTING HISTORY

### 1419. Nature of enacting history.

The enacting history of an Act is the surrounding corpus of public knowledge which relates to its introduction into Parliament as a Bill, and subsequent progress through Parliament until it is ultimately passed. In particular, the enacting history is the extrinsic material assumed to be within the contemplation of Parliament when it passed the Bill for the Act, including the record of proceedings on that Bill in Parliament<sup>1</sup>.

<sup>1</sup> The information is described as the surrounding corpus of knowledge because the central source of information as to Parliament's intention must always be the text of the Act itself: see PARA 1420 post. It comprises reports and other material on which the Act is based, the text of the Bill and amendments proposed to it, reports of parliamentary debates and proceedings on the Bill, explanatory memoranda officially issued in connection with the Bill, and other contemporaneous material upon which Parliament may be presumed to have acted. Much of this material emanates from the executive, rather than from the legislature itself. As to the role of the executive see PARAS 1242-1243, 1325 et seq ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iv) The Informed Interpretation Rule/B. INFORMED INTERPRETATION BY USE OF LEGISLATIVE HISTORY/(b) Enacting History/1420. Special restriction on parliamentary materials (the exclusionary rule).

### 1420. Special restriction on parliamentary materials (the exclusionary rule).

Except as allowed by virtue of the rule in *Pepper v Hart*<sup>1</sup> or the court's inherent jurisdiction<sup>2</sup>, it is a rule of practice, known as the exclusionary rule<sup>3</sup>, that it is not permissible to look to reports of proceedings which took place in either House of Parliament during the passage of the Bill for that Act for assistance in construing an Act<sup>4</sup>.

<sup>1</sup> The rule laid down in *Pepper (Inspector of Taxes) v Hart* [1993] AC 593, [1993] 1 All ER 42, HL: see PARA 1421 post.

<sup>2</sup> See PARA 1422 post.

<sup>3</sup> See *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 630, [1993] 1 All ER 42 at 60, HL, per Lord Browne-Wilkinson.

<sup>4</sup> *Hadmor Productions Ltd v Hamilton* [1983] 1 AC 191 at 232, [1983] 1 All ER 1042, HL, per Lord Diplock. That the exclusionary rule is one of practice rather than substance was indicated in *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 at 614, [1975] 1 All ER 810 at 814, HL, per Lord Reid. The rule in *Pepper (Inspector of Taxes) v Hart* [1993] AC 593, [1993] 1 All ER 42, HL, has reduced the

significance of the exclusionary rule but, since that rule remains in existence (the rule in *Pepper (Inspector of Taxes) v Hart* supra forming an exception to it rather than abrogating it), it should remain in an account of the interpretative criteria. For the history of, and reasons for, the exclusionary rule see Bennion, *Statutory Interpretation* (2nd Edn, 1992), 2nd Supp (1995).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iv) The Informed Interpretation Rule/B. INFORMED INTERPRETATION BY USE OF LEGISLATIVE HISTORY/(b) Enacting History/1421. First exception to the exclusionary rule; the rule in *Pepper v Hart*.

#### **1421. First exception to the exclusionary rule; the rule in *Pepper v Hart*.**

The rule in *Pepper v Hart*<sup>1</sup> provides that, notwithstanding the exclusionary rule<sup>2</sup>, where, in the opinion of the court determining the legal meaning<sup>3</sup> of an enactment<sup>4</sup>, that enactment is ambiguous<sup>5</sup> or obscure<sup>6</sup> or its literal meaning<sup>7</sup> leads to an absurdity<sup>8</sup>, the court may have regard to any statement on the Bill for the Act containing the enactment, as set out in the Official Report of Debates<sup>9</sup>, which (1) is clear<sup>10</sup>; (2) was made by or on behalf of the minister or other person who was the promoter of the Bill<sup>11</sup>; and (3) discloses the mischief aimed at by the enactment, or the legislative intention underlying its words<sup>12</sup>. The court may also have regard to such other parliamentary material (if any) as is relevant for understanding that statement and its effect<sup>13</sup>.

In allowing an advocate to cite such material the court must ensure that he or she does not in any way impugn or criticise the statement or the reasoning of the person making it<sup>14</sup>. The court may overrule an earlier decision which is not binding on it and was arrived at before the rule in *Pepper v Hart* was introduced<sup>15</sup>.

Prior to the decision in *Pepper v Hart*, a limited exception to the exclusionary rule had been accepted with regard to subordinate legislation passed in order to implement the United Kingdom's obligations under European Community law. Where draft regulations presented to Parliament purported to give full effect to a decision of the European Court of Justice, in ascertaining the intention of Parliament the English court was entitled to have regard to the speech made by the responsible minister when those draft regulations were so presented<sup>16</sup>.

1 The rule was laid down in *Pepper (Inspector of Taxes) v Hart* [1993] AC 593, [1992] 1 All ER 42, HL.

2 As to the exclusionary rule see PARA 1420 ante.

3 As to the legal meaning see PARA 1373 ante.

4 As to the nature of an enactment see PARA 1232 ante.

5 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 634, [1993] 1 All ER 42 at 64, HL, per Lord Browne-Wilkinson. As to when there is ambiguity see PARA 1470 note 6 post; and *Chief Adjudication Officer v Foster* [1993] AC 754 at 772, [1993] 1 All ER 705 at 717, HL, per Lord Bridge of Harwich; *Restick v Crickmore* [1994] 2 All ER 112 at 116, [1994] 1 WLR 420 at 426, CA; *R v Secretary of State for the Home Department, ex p Mehari* [1994] QB 474 at 485, [1994] 2 All ER 494 at 503.

6 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 634, [1993] 1 All ER 42 at 64, HL, per Lord Browne-Wilkinson.

7 As to the presumption favouring a literal meaning see PARA 1470 post.

8 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 634, [1993] 1 All ER 42 at 64, HL, per Lord Browne-Wilkinson. As to the presumption against absurdity see PARA 1477 post.

9 The Official Report is more usually referred to as *Hansard*. Any party intending to refer to any extract from *Hansard* must, unless the judge otherwise directs, serve upon all other parties and the court copies of any such extract together with a brief summary of the argument intended to be based upon that extract: see *Practice Note* [1995] 1 All ER 234; sub nom *Practice Direction (Hansard: Citation)* [1995] 1 WLR 192.

10 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 638-640, [1993] 1 All ER 42 at 67-69, HL, per Lord Browne-Wilkinson.

11 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 634, [1993] 1 All ER 42 at 64, HL, per Lord Browne-Wilkinson. See also *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Rees-Mogg* [1994] QB 552, [1994] 1 All ER 457, DC, (minister's statement made on advice of Attorney General). As to the initiation of Bills see PARAS 1242-1244 ante.

12 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 634, [1993] 1 All ER 42 at 64, HL, per Lord Browne-Wilkinson.

13 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 640, [1993] 1 All ER 42 at 69, HL, per Lord Browne-Wilkinson. It seems that, so far as it extends, the rule in *Pepper v Hart* supra must be taken to have abrogated the previous rule prohibiting reference to amendments made to a Bill during its progress: see *Viscountess Rhondda's Claim* [1922] 2 AC 339 at 383, 399, HL; *DPP v Manners* [1978] AC 43 at 48, sub nom *R v Manners* [1976] 2 All ER 96 at 100, CA (affd on other grounds sub nom *DPP v Manners* [1978] AC 43, [1977] 1 All ER 316, HL).

14 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 639, [1993] 1 All ER 42, HL, per Lord Browne-Wilkinson.

15 *Stubbings v Webb* [1993] AC 498, [1993] 1 All ER 322, HL.

16 See *Pickstone v Freemans plc* [1989] AC 66, [1988] 2 All ER 803, HL.

## UPDATE

### 1421 First exception to the exclusionary rule; the rule in *Pepper v Hart*

TEXT AND NOTES--Where the court is seeking to construe a statute purposively and consistently with any relevant European legislation, or the object of the legislation under consideration is to introduce into English law the provisions of an international convention or European directive, it is of particular importance to ascertain the true purpose of the statute, and in those circumstances the court may adopt a more flexible approach to the admissibility of parliamentary materials than that established for the construction of a particular provision of purely domestic legislation: *Three Rivers DC v Governor and Company of the Bank of England (No 2)* [1996] 2 All ER 363.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iv) The Informed Interpretation Rule/B. INFORMED INTERPRETATION BY USE OF LEGISLATIVE HISTORY/(b) Enacting History/1422. Second exception to the exclusionary rule; the court's inherent jurisdiction.

### 1422. Second exception to the exclusionary rule; the court's inherent jurisdiction.

The court, as master of its procedure, has a residuary inherent jurisdiction to allow citation of materials which are otherwise precluded by the exclusionary rule<sup>1</sup> and are not permitted by the rule in *Pepper v Hart*<sup>2</sup>, where the need to carry out the legislator's intention<sup>3</sup> appears to the court so to require<sup>4</sup>.

1 As to the exclusionary rule see PARA 1420 ante.

2 le the rule in *Pepper (Inspector of Taxes) v Hart* [1993] AC 593, [1992] 1 All ER 42, HL: see PARA 1421 ante.

3 As to the need to ascertain and implement the legislator's intention see PARA 1372 ante.

4 The court retains an overall control of its procedure, and if it thinks fit will disregard the exclusionary rule since it is a rule of practice rather than of law, and was in fact contravened by the decision in the very case in which it was first laid down: see *Millar v Taylor* (1769) 4 Burr 2303. It was afterwards disregarded or questioned in many cases decided before *Pepper (Inspector of Taxes) v Hart* [1993] AC 593, [1992] 1 All ER 42, HL: see eg *Earl of Shrewsbury v Scott* (1859) 6 CBNS 1; *Re Mew and Thorne* (1862) 31 LJ Bcy 87 at 89; *Drummond v Drummond* (1866) 36 LJ Ch 153 at 160; *Hebbert v Purchas* [1871] LR 3 PC 605 at 648-649; *Ridsdale v Clifton* [1877] LR 2 PD 276; *R v Bishop of Oxford* (1879) 4 QBD 525 at 549-550, 576-577 (but see *Julius v Bishop of Oxford* (1880) 49 LJQB 577 at 578); *South Eastern Ry Co v Railway Comrs* (1880) 5 QBD 217 at 236-237; *Herron v Rathmines and Rathgar Improvement Comrs* [1892] AC 498 at 501-502, HL; *Lumsden v IRC* [1914] AC 877 at 908, 922, HL; *Edwards v A-G for Canada* [1930] AC 124 at 143, PC; *Re C, an Infant* [1937] 3 All ER 783 at 787; *Sagnata Investments Ltd v Norwich Corp* [1971] 2 QB 614 at 624, [1971] 2 All ER 1441 at 1445, CA; *Beswick v Beswick* [1968] AC 58 at 105, [1967] 2 All ER 1197 at 1223, HL; *R v Warner* [1969] 2 AC 256 at 279, [1968] 2 All ER 356 at 366, HL; *McMillan v Crouch* [1972] 3 All ER 61 at 76, [1972] 1 WLR 1102 at 1119, HL; *Ealing Borough Council v Race Relations Board* [1972] AC 342 at 367, [1972] 1 All ER 105 at 119, HL; *Charter v Race Relations Board* [1973] AC 868 at 900, [1973] 1 All ER 512 at 526, HL; *Racial Communications Ltd v Pay Board* [1974] 3 All ER 263 at 267, [1974] 1 WLR 1149 at 1153; *R v Greater London Council, ex p Blackburn* [1976] 3 All ER 185 at 189, [1976] 1 WLR 550 at 556, CA; *Dockers' Labour Club and Institute Ltd v Race Relations Board* [1976] AC 285 at 288-299, [1974] 3 All ER 592 at 594-602, HL; *R v Manners* [1976] 2 All ER 96 at 100, [1976] 2 WLR 709 at 713, CA (affd sub nom *DPP v Manners* [1978] AC 43, [1977] 1 All ER 316, HL); *Tuck v National Freight Corp* [1979] 1 All ER 215 at 236, [1979] 1 WLR 37 at 55, HL; *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287 at 311-312, [1979] 2 All ER 881 at 897-898, CA; *R v Secretary of State for the Environment, ex p Norwich City Council* [1982] QB 808 at 824; sub nom *Norwich City Council v Secretary of State for the Environment* [1982] 1 All ER 737 at 744, CA; *Hadmor Productions Ltd v Hamilton* [1983] 1 AC 191 at 204, [1982] 2 All ER 724 at 733, CA, per Lord Denning, MR (but see on appeal [1983] 1 AC 191 at 232-233, [1982] 2 All ER 1042 at 1046-1047, HL, per Lord Diplock); *Pierce v Bemis* [1986] QB 384 at 392, [1986] 1 All ER 1011 at 1017; *Pickstone v Freemans plc* [1989] AC 66, [1988] 2 All ER 803, HL (see also PARA 1421 text and note 16 ante); *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry, Maclaine Watson & Co Ltd v International Tin Council* [1990] 2 AC 418 at 483; sub nom *Maclaine Watson & Co Ltd v Department of Trade and Industry, Maclaine Watson & Co Ltd v International Tin Council* [1989] 3 All ER 523 at 531, HL; *Stoke-on-Trent City Council v B & Q plc* [1991] Ch 48 at 66, [1991] 4 All ER 221 at 232.

Since *Pepper (Inspector of Taxes) v Hart* supra there have been a number of cases where parliamentary materials must be taken to have been admitted under the residuary jurisdiction, since the conditions in *Pepper (Inspector of Taxes) v Hart* supra were not satisfied. See eg *R v Warwickshire County Council, ex p Johnson* [1993] AC 583 at 592; sub nom *Warwickshire County Council v Johnson* [1993] 1 All ER 299 at 305, HL; *Chief Adjudication Officer v Foster* [1993] AC 754 at 772, [1993] 1 All ER 705 at 717, HL; *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531 at 555; sub nom *Doody v Secretary of State for the Home Department* [1993] 3 All ER 92 at 101, HL; *R v Jefferson* [1994] 1 All ER 270 at 281, [1994] 99 Cr App Rep 13 at 22, CA; *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Rees-Mogg* [1994] QB 552 at 566, [1994] 1 All ER 457 at 465, DC; *A-G v Associated Newspapers Ltd* [1994] 1 All ER 556 at 564, [1994] 2 WLR 277 at 285; *Restick v Crickmore* [1994] 2 All ER 112 at 116, [1994] 1 WLR 420 at 426, CA; *Steele, Ford & Newton (a firm) v Crown Prosecution Service (No 2)* [1994] 1 AC 22 at 37, [1993] 2 All ER 769 at 780, HL; *Littrell v United States of America (No 2)* [1994] 4 All ER 203 at 209-210, [1995] 1 WLR 82 at 88, CA, per Rose LJ.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iv) The Informed Interpretation Rule/B. INFORMED INTERPRETATION BY USE OF LEGISLATIVE HISTORY/(b) Enacting History/1423. Committee reports leading up to Bill.

### 1423. Committee reports leading up to Bill.

Before Parliament legislates on a topic, an ad hoc committee of inquiry may be set up to investigate the alleged mischief and propose a remedy. This may be a Royal Commission, a

parliamentary select committee, a departmental committee, or some other body. Alternatively the task may be entrusted to a standing body such as the Law Commission<sup>1</sup>.

The ensuing report may or may not be published; and may or may not be formally presented to Parliament. In any event it constitutes part of the enacting history of any Act based on the report, and may be cited and taken into consideration as such accordingly<sup>2</sup>.

1 As to the Law Commission see PARA 1244 ante.

2 *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 at 647, [1975] 1 All ER 810, HL, per Lord Simon of Glaisdale. In this case the view of the majority was that neither the recommendations of the committee nor its commentary on the draft Bill attached to its report were to be taken into account, but cf at 623 and 823 per Viscount Dilhorne, and at 651-652 and 847 per Lord Simon of Glaisdale. See also *Hawkins v Gathercole* (1855) 6 De GM & G 1 at 21 per Turner LJ; *River Wear Comrs v Adamson* (1877) 2 App Cas 743 at 763, HL, per Lord Blackburn; *Eastman Photographic Materials Co Ltd v Comptroller-General of Patents* [1898] AC 571 at 573, HL, per the Earl of Halsbury LC; *Ladore v Bennett* [1939] AC 468 at 477, [1939] 3 All ER 98 at 102, PC; *Pillai v Mudanayake* [1953] AC 514 at 528, [1955] 2 All ER 833 at 837, PC; *Rookes v Barnard* [1964] AC 1129, [1964] 1 All ER 367, HL; *National Provincial Bank v Ainsworth* [1965] AC 1175, [1965] 2 All ER 472, HL; *Letang v Cooper* [1965] 1 QB 232, [1964] 2 All ER 929, CA; *Heatons Transport (St Helens) Ltd v Transport and General Workers Union* [1973] AC 15, [1972] 3 All ER 101, HL; *Central Asbestos Co Ltd v Dodd* [1973] AC 518 at 529, [1972] 2 All ER 1135 at 1138, HL, per Lord Reid; *W v L* [1974] QB 711 at 718, [1973] 3 All ER 884 at 890, CA; *Fothergill v Monarch Airlines Ltd* [1981] AC 251 at 281, [1980] 2 All ER 696 at 718, HL, per Lord Diplock; *R v Olugboja* [1982] QB 320, [1981] 3 All ER 443, CA; *R v Bloxham* [1983] 1 AC 109, [1982] 1 All ER 582, HL; *R v Mousir* [1987] Crim LR 561; *Hampshire County Council v Milburn* [1991] 1 AC 325, [1990] 2 All ER 257, HL; *R v Horseferry Road Metropolitan Stipendiary Magistrate, ex p Siadatan* [1991] 1 QB 260, [1991] 1 All ER 324, DC; *DPP v Bull* [1995] QB 88, [1994] 4 All ER 411, DC; *Re C and another (minors) (adoption: parent: residence order)* [1994] Fam 1 at 10, [1993] 3 All ER 313 at 320, CA. It seems that former decisions to the contrary (see eg *Martin v Hemming* (1854) 18 Jur 1002; *Ewart v Williams* (1854) 3 Drew 21 at 24; *Assam Railways and Trading Co v IRC* [1935] AC 445, HL; *Re Colbourne Engineering Co Ltd's Application* (1954) 72 RPC 169) should now be disregarded.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iv) The Informed Interpretation Rule/B. INFORMED INTERPRETATION BY USE OF LEGISLATIVE HISTORY/(b) Enacting History/1424. White papers etc.

#### **1424. White papers etc.**

Government white papers explaining a legislative project, and similar official explanatory material, may be relied on by the court when construing the resulting legislation<sup>1</sup>.

1 Eg, reference was made to the 1974 government White Paper *Equality for Women* (Cmnd 5724) as a guide to Parliament's intention in enacting provisions of the Sex Discrimination Act 1975 in *Duke v GEC Reliance Ltd* [1988] AC 618 at 641, [1988] 1 All ER 626 at 637, HL, per Lord Templeman. It seems that contrary authorities (see eg *Katikiro of Buganda v A-G* [1960] 3 All ER 849 at 855, [1961] 1 WLR 119 at 127, PC) should now be disregarded.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iv) The Informed Interpretation Rule/B. INFORMED INTERPRETATION BY USE OF LEGISLATIVE HISTORY/(b) Enacting History/1425. Explanatory memoranda on Bills.

#### **1425. Explanatory memoranda on Bills.**

When a Bill is introduced into the House of Commons or House of Lords, memoranda may be provided by the promoter of the Bill (usually the government) for the guidance of members of Parliament. Being designed to throw light on the meaning of the Bill, such memoranda are of obvious relevance to the construction of the ensuing Act, and are admissible accordingly<sup>1</sup>.

1 In the first House the promoter of a public Bill may preface it with what is called an explanatory memorandum. This explains the contents and objects of the Bill. It must be framed in non-technical language, and must not be argumentative. If passed by the Public Bill Office as satisfying these requirements, it appears on the front of the Bill when first printed by either House. Where the Bill is promoted by the government, and involves expenditure, it must also be prefaced by a financial memorandum. As to the doctrine of the exclusive financial initiative of the Crown see PARA 1223 ante. A financial memorandum outlines the financial effect of the Bill, and gives estimates of the amount of money involved. The same principles apply to it as to an explanatory memorandum. In practice, a government Bill always includes an explanatory memorandum. Since 1968 this has included forecasts of changes in manpower requirements in the public sector expected to result from the Bill: see 773 HC Official Report (5th series) cols 1546-1547. In the case of financial Bills, the two types of memoranda are combined in the form of what is called an explanatory and financial memorandum. When, following the making of amendments, the Bill is later reprinted these memoranda are dropped. This means that they are usually not accurate guides to the final Act. As to enactment procedure see PARA 1245 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iv) The Informed Interpretation Rule/B. INFORMED INTERPRETATION BY USE OF LEGISLATIVE HISTORY/(b) Enacting History/1426. Construction of treaty Acts.

#### **1426. Construction of treaty Acts.**

There is a presumption that Parliament intends to fulfil, rather than break, an international agreement<sup>1</sup>. Thus, where an Act is intended to give effect to such an agreement, any doubt as to its meaning should if possible be resolved in favour of that which is consistent with the provisions of the agreement<sup>2</sup>. Where, however, on an informed construction<sup>3</sup> there is no real doubt<sup>4</sup> about the legal meaning of an enactment<sup>5</sup>, effect must be given to that meaning, even if it is not in accordance with an international agreement or is contrary to international law<sup>6</sup>.

In accordance with general principle<sup>7</sup>, the court will assume that a treaty Act<sup>8</sup> is not intended to conflict with international law and, so far as is possible, will construe the Act accordingly<sup>9</sup>. If an international agreement has been embodied in legislation in other jurisdictions, the court will lean towards adopting an interpretation of the meaning of words which has been adopted in those jurisdictions<sup>10</sup>. In construing an international agreement which has been incorporated into English law a court may have regard to versions of the agreement in other languages<sup>11</sup>. It is right for a court to have regard to the fact that international conventions are usually more loosely worded than Acts of Parliament, but there is no reason to abandon English methods of interpretation in favour of continental methods<sup>12</sup>.

1 *Salomon v Customs and Excise Comrs* [1967] 2 QB 116 at 143, [1966] 3 All ER 871 at 875, CA, per Diplock LJ; *Post Office v Estuary Radio Ltd* [1968] 2 QB 740 at 757, [1967] 3 All ER 663 at 682, CA, per Diplock LJ; *Medway Drydock and Engineering Co Ltd v Andrea Ursula, The Andrea Ursula* [1973] QB 265 at 271, [1971] 1 All ER 821 at 825 per Brandon J; *Federal Steam Navigation Co Ltd v Department of Trade and Industry* [1974] 2 All ER 97 at 112, [1974] 1 WLR 505 at 523, HL, per Lord Wilberforce; *R v Secretary of State for The Home Department, ex p Singh* [1976] QB 198 at 207, [1975] 2 All ER 1081 at 1083, CA, per Lord Denning MR; *Quazi v Quazi* [1980] AC 744 at 808, [1979] 3 All ER 897 at 903, HL, per Lord Diplock; *Garland v British Rail Engineering Ltd* [1983] 2 AC 751, [1982] 2 All ER 402, HL. See also PARA 1222 ante; but cf *Surjit Kaur v Lord Advocate* [1980] 3 CMLR 79, Ct of Sess.



- 2 *Quazi v Quazi* [1980] AC 744 at 808, [1979] 3 All ER 897 at 903, HL, per Lord Diplock.
- 3 As to the informed interpretation rule see PARA 1414 ante.
- 4 As to cases of real doubt see PARA 1374 ante.
- 5 As to the legal meaning see PARA 1373 ante.
- 6 *Collico Dealings Ltd v IRC* [1962] AC 1 at 19, [1961] 1 All ER 762 at 765, HL, per Viscount Simonds; *Warwick Film Productions v Eisinger* [1969] 1 Ch 508, [1967] 3 All ER 367; *Woodend (KV Ceylon) Rubber and Tea Co Ltd v IRC* [1971] AC 321, [1970] 2 All ER 801, PC.
- 7 See PARA 1439 post.
- 8 As to treaty Acts see PARA 1222 ante.
- 9 *Stag Line Ltd v Foscolo, Mango and Co Ltd* [1932] AC 328 at 350, HL, per Lord MacMillan; *Salomon v Customs and Excise Comrs* [1967] 2 QB 116 at 143, [1966] 3 All ER 871 at 875, CA, per Diplock LJ; *Post Office v Estuary Radio Ltd* [1968] 2 QB 740 at 757, [1967] 3 All ER 663 at 682, CA, per Diplock LJ; *Medway Drydock and Engineering Co Ltd v Andrea Ursula, The Andrea Ursula* [1973] QB 265, [1971] 1 All ER 821; *Fothergill v Monarch Airlines Ltd* [1981] AC 251, [1980] 2 All ER 696, HL.
- 10 See *Riverstone Meat Co Pty Ltd v Lancashire Shipping Co Ltd* [1961] AC 807 at 840, 855, 874, [1961] 1 All ER 495 at 502, 512, 524, HL.
- 11 *Corocraft v Pan American Airways Inc* [1969] 1 QB 616, [1969] 1 All ER 82, CA; *James Buchanan & Co Ltd v Babco Forwarding and Shipping (UK) Ltd* [1978] AC 141, [1977] 3 All ER 1048, HL; *Fothergill v Monarch Airlines Ltd* [1981] AC 251, [1980] 2 All ER 696, HL.
- 12 *James Buchanan & Co Ltd v Babco Forwarding and Shipping (UK) Ltd* [1978] AC 141, [1977] 3 All ER 1048, HL; *Fothergill v Monarch Airlines Ltd* [1981] AC 251, [1980] 2 All ER 696, HL.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iv) The Informed Interpretation Rule/B. INFORMED INTERPRETATION BY USE OF LEGISLATIVE HISTORY/(c) Post-enacting History/1427. Use of official statements.

## (C) POST-ENACTING HISTORY

### 1427. Use of official statements.

Official statements published by the government department administering an Act<sup>1</sup>, or by any other authority concerned with the Act, may be taken into account as persuasive authority on the meaning of its provisions<sup>2</sup>.

- 1 As to agencies authorised to administer an Act see PARA 1325 ante.
- 2 Enactments relating to tax, for example, cannot be administered without the taking of a view by the Board of Inland Revenue or the Commissioners of Customs and Excise on doubtful points of statutory interpretation. These rulings are communicated to officials of the department and to taxpayers and their advisers. Often they are published, either individually or as part of a regular series. The courts have regard to them in interpretation: see eg *Hanning v Maitland (No 2)* [1970] 1 QB 580, [1970] 1 All ER 812; *Oram (Inspector of Taxes) v Johnson* [1980] 2 All ER 1 at 6, [1980] 1 WLR 558 at 562 per Walton J; *IRC v Trustees of Sir John Aird's Settlement* [1982] 2 All ER 929 at 937, [1982] 1 WLR 270 at 273 per Nourse J; *Wicks v Firth (Inspector of Taxes)* [1983] 2 AC 214 at 230, [1983] 1 All ER 151 at 154-155, HL, per Lord Bridge (contra at 236 and 159 per Lord Templeman); *Matrix-Securities Ltd v IRC* [1994] 1 All ER 769 and 791, [1994] 1 WLR 334 at 356, HL, per Lord Browne-Wilkinson.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iv) The Informed Interpretation Rule/B. INFORMED INTERPRETATION BY USE OF LEGISLATIVE HISTORY/(c) Post-enacting History/1428. Use of delegated legislation made under Act.

#### **1428. Use of delegated legislation made under Act.**

Delegated legislation made under an Act may be taken into account as persuasive authority on the meaning of its provisions<sup>1</sup>. This is because delegated legislation, like some official memoranda<sup>2</sup>, originates in the government department responsible for initiating and administering the relevant Act<sup>3</sup> and may therefore be assumed to reflect a correct view of the intention of its promoters<sup>4</sup>.

1 See *Hales v Bolton Leathers Ltd* [1950] 1 KB 493 at 505, [1950] 1 All ER 149 at 153, CA (on appeal [1951] AC 531 at 539, [1951] 1 All ER 643 at 646, HL, per Lord Simonds, at 544 and 649 per Lord Normand, and at 548 and 651 per Lord Oaksey, who thought that regulations might be looked at as being an interpretation placed on the words of an Act by an appropriate government department: see PARA 1325 ante); *Vandyk v Minister of Pensions* [1955] 1 QB 29 at 37, [1954] 2 All ER 723 at 726; *Stephens v Cuckfield RDC* [1960] 2 QB 373 at 380-381, [1960] 2 All ER 716 at 718, CA; *Britt v Buckinghamshire County Council* [1964] 1 QB 77, [1963] 2 All ER 175; *Leung v Garbett* [1980] 2 All ER 436, [1980] 1 WLR 1189, CA; *Hanlon v Law Society* [1981] AC 124, [1980] 1 All ER 763, CA; *R v Uxbridge Justices, ex p Comr of Police of the Metropolis* [1981] QB 829, [1981] 3 All ER 129; *Jenkins v Lombard North Central* [1984] 1 All ER 828, [1984] 1 WLR 307; *Pharmaceutical Society of Great Britain v Storkwain Ltd* [1986] 2 All ER 635 at 639, [1986] 1 WLR 903 at 908-909, HL; *R v Newcastle upon Tyne Justices, ex p Skinner* [1987] 1 All ER 349, [1987] 1 WLR 312; *British Amusement Catering Trades Assocn v Westminster City Council* [1989] AC 147, [1988] All ER 740, HL; *Deposit Protection Board v Dalia* [1993] Ch 243, [1993] 1 All ER 599 (affd [1994] 2 All ER 577, [1994] 2 WLR 732, HL); *R v Secretary of State for the Home Department, ex p Mehari* [1994] QB 474 at 486, [1994] 2 All ER 494.

2 As to official memoranda see PARA 1427 ante.

3 As to government departments and executive agencies see PARA 1325 ante.

4 It may indeed be looked on as a kind of contemporaneous exposition: see PARA 1429 post. Cf *Re Methodist Church Union Act 1929, Barker v O' Gorman* [1971] Ch 215, [1970] 3 All ER 314, where a deed of union executed contemporaneously for the purposes of an Act was taken into account under the doctrine of contemporaneous exposition in the special circumstances of the case; *Jackson v Hall* [1980] AC 854, [1980] 1 All ER 177, HL. For the importance in statutory interpretation of the intention of the promoters see the rule in *Pepper (Inspector of Taxes) v Hart* [1993] AC 593, [1992] 1 All ER 42, HL; and PARA 1421 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iv) The Informed Interpretation Rule/B. INFORMED INTERPRETATION BY USE OF LEGISLATIVE HISTORY/(c) Post-enacting History/1429. Later use of contemporaneous exposition.

#### **1429. Later use of contemporaneous exposition.**

The construction of Acts may be elucidated in later times by what is called contemporaneous exposition<sup>1</sup>, that is, by reference to contemporary statements indicating how they were understood (possibly mistakenly, having regard to their wording) at the time when they were passed<sup>2</sup>.

It is said that the doctrine of contemporaneous exposition should not be applied to the construction of modern Acts<sup>3</sup>. However the reason for this view is by no means obvious, and it seems that for what it is worth the doctrine should be applied to Acts whenever passed<sup>4</sup>.

1 The term derives from the maxim given by Coke in the form *contemporanea expositio est fortissima in lege* (contemporaneous exposition is the most powerful in law): 2 Co Inst 11.

2 *M'Williams v Adams* (1852) 1 Macq 120 at 137, HL; *Montrose Peerage Claim* (1853) 1 Macq 401 at 406, HL; *Smith v Lindo* (1858) 27 LJCP 196 at 200; *Governors of Campbell College, Belfast v Valuation Comrs for Northern Ireland* [1964] 2 All ER 705 at 727, [1964] 1 WLR 912 at 941, HL, per Lord Upjohn. It may be that an established practice which has grown up founded on the same or very similar words used in an earlier Act can sometimes be a guide to contemporary opinion: see *R v Cutbush* (1867) LR 2 QB 379 at 382; *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 591, HL.

3 *Clyde Navigation Trustees v Laird* (1883) 8 App Cas 658 at 673, HL; *Assheton Smith v Owen* [1906] 1 Ch 179 at 213; *Goldsmiths' Co v Wyatt* [1907] 1 KB 95 at 107, CA; *Sadler v Whiteman* [1910] 1 KB 868 at 890, CA.

4 In *Trustees of the Clyde Navigation v Laird* (1883) 8 App Cas 658, HL, the question was whether the Clyde Navigation Consolidation Act 1858 required navigation dues to be paid on logs which were chained together and floated down the River Clyde. It was proved that from the passing of the Act until the time when the case was decided (a period of a quarter of a century) these dues had been levied and paid without protest. Lord Blackburn said (at 670) that this raised 'a strong prima facie ground' for thinking that there must exist 'some legal ground' for exacting the dues. This seems preferable to the view of Lord Watson (at 673) that such usage was of no value. See also *Campbell College, Belfast (Governors) v Comr of Valuation for Northern Ireland* [1964] 2 All ER 705, [1964] 1 WLR 912 at 930-931, HL, per Viscount Radcliffe; and PARA 1428 note 4 ante.

## UPDATE

### 1429 Later use of contemporaneous exposition

NOTE 2--See also *Mock v Pensions Ombudsman* (2000) Times, 7 April.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(iv) The Informed Interpretation Rule/B. INFORMED INTERPRETATION BY USE OF LEGISLATIVE HISTORY/(c) Post-enacting History/1430. Use of committee reports on Act.

### 1430. Use of committee reports on Act.

The court may treat as of persuasive authority on the construction of a statutory provision the view of a post-enactment official committee reporting on the meaning of the provision<sup>1</sup>.

1 Eg the *Report of the Royal Commission on Criminal Procedure* 1981 (Cmnd 8092) contained an account of how the power of arrest conferred by the Criminal Law Act 1967 s 2(4) (now repealed) and similar enactments should be exercised. In *Mohammed-Holgate v Duke* [1984] QB 209, [1983] 3 All ER 526, CA, it was held that this account reflected the proper basis for the exercise of the power of arrest and could be relied on as authoritative.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/A. LEGAL POLICY/1431. Nature of legal policy.

## (v) Principles derived from Legal Policy

### A. LEGAL POLICY

#### 1431. Nature of legal policy.

One of the four categories of interpretative criteria applicable to statutory construction<sup>1</sup> consists of principles derived from legal policy. Legal policy is not confined to the operation of legislative texts, but applies throughout the law. It consists of the collection of principles which the judges consider the law has a general duty to uphold. It is akin to public policy, and may indeed be regarded as its legal aspect. The courts use the two terms more or less interchangeably<sup>2</sup>. The principles comprised in legal policy cannot be numbered, and through the decided cases are constantly being developed<sup>3</sup>. The courts draw on many diverse sources in formulating legal policy<sup>4</sup>.

The courts ought not to enunciate a new head of legal policy in an area where Parliament has demonstrated a willingness itself to intervene legislatively where it considers necessary<sup>5</sup>. Legal policy is not static<sup>6</sup> and in some areas it may change drastically over a period<sup>7</sup>, in response to changes in the perceived view of public needs and attitudes<sup>8</sup>.

1 As to the interpretative criteria see PARA 1375 ante; and as to the basic rule of statutory interpretation see PARA 1376 ante.

2 For the nature of public policy see *R v St Gregory Inhabitants* (1834) 2 Ad & El 99 at 107-108; *Amicable Society v Bolland* (1830) 4 Bli NS 194; *Egerton v Earl Brownlow* (1853) 4 HL Cas 1 at 123; *Coxhead v Mullis* (1878) 3 CPD 439 at 442; *Municipal Building Society v Kent* (1884) 9 App Cas 260 at 273; *Re Mirams* [1891] 1 QB 594 at 595; *Mogul SS Co v McGregor, Gow & Co* [1892] AC 25 at 45, HL; *Janson v Driefontein Consolidated Mines Ltd* [1902] AC 484 at 500, 507, HL.

3 Eg in *R v Lemon* [1979] AC 617, [1979] 1 All ER 898, HL, it was necessary to decide whether the common law offence of blasphemous libel requires proof only of an intention to publish the offending matter, or also requires proof that the accused actually intended to cause offence. Lord Scarman (at 664 and 927) described this question as 'one of legal policy in the society of today'.

4 Eg in *Kirkham v Chief Constable of the Greater Manchester Police* [1989] 3 All ER 882 at 892-893 (on appeal [1990] 2 QB 283, [1990] 3 All ER 246, CA) Tudor Evans J, in considering whether legal policy required damages for negligence to be disallowed where the negligence consisted in giving a suicidal person an opportunity (which he took) actually to commit suicide, had regard to whether suicide is an ecclesiastical offence.

5 *Re Brightlife Ltd* [1987] Ch 200, [1986] 3 All ER 673 concerned the question whether parties could determine by agreement between them that a floating charge would become crystallised if the chargor ceased trading. Hoffmann J was asked to declare that to allow this was an innovation which was contrary to public policy. He declined to do so, saying (at 215 and 680-681) that these 'are matters for Parliament rather than the courts and have been the subject of public debate in and out of Parliament for more than a century'. He added: 'The limited and pragmatic interventions by the legislature [in this field] make it in my judgment wholly inappropriate for the courts to impose additional restrictive rules on the ground of public policy.'

6 'The fact that opinion grounded on experience has moved one way does not in law preclude the possibility of its moving on fresh experience in the other; nor does it bind succeeding generations, when conditions have again changed': *Bowman v Secular Society Ltd* [1917] AC 406 at 467, HL, per Lord Sumner.

7 Lord Devlin (*The Judge* (1979), p 15) referred to certain aspects of mid-nineteenth century legal policy as 'a Victorian Bill of Rights, favouring (subject to the observance of the accepted standards of morality) the liberty of the individual, the freedom of contract, and the sacredness of property, and which was highly suspicious of taxation'. Such a description would not fit the legal policy of today.

8 Lord Reid commented on 'a steady trend' towards regarding the law of negligence as depending on principle rather than precedent: *Dorset Yacht Co Ltd v Home Office* [1970] AC 1004 at 1026, [1970] 2 All ER 294 at 297, HL. On another aspect of legal policy, Lord Hailsham of St Marylebone said: 'The categories of public interest are not closed, and must alter from time to time whether by restriction or extension as social conditions and social legislation develop': *D v NSPCC* [1978] AC 171 at 230, [1977] 1 All ER 589 at 605, HL. In relation to

tax avoidance, Lord Diplock said that it would be disingenuous to suggest, and dangerous on the part of those who advised on elaborate tax-avoidance schemes to assume, that the principle in *WT Ramsay Ltd v IRC* [1982] AC 300, [1981] 1 All ER 865, HL (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1011 text and note 4), did not mark a significant change in the approach adopted by the courts: *IRC v Burmah Oil Co Ltd* [1982] STC 30 at 32, HL. The judicial development of the extent of judicial review (see PARA 1358 ante) which began in the 1970s required a broadening of the concept of locus standi: *R v HM Treasury, ex p Smedley* [1985] QB 657 at 669, [1985] 1 All ER 589 at 595, CA, per Slade LJ ('The speeches of their Lordships in *R v IRC, ex p National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617, [1981] 2 All ER 93, HL, well illustrate that there has been what Lord Roskill described (at 656 and 116) as a 'change in legal policy', which has in recent years greatly relaxed the rules as to locus standi').

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/A. LEGAL POLICY/1432. Deriving interpretative principles from legal policy.

### **1432. Deriving interpretative principles from legal policy.**

Because it takes Parliament as intending that general principles of legal policy should apply to the construction of its enactments unless the contrary intention appears, the common law has developed specific principles of statutory interpretation by reference to those general principles<sup>1</sup>. A principle of statutory interpretation (as opposed to a rule, presumption or canon)<sup>2</sup> can therefore be described as a principle of legal policy formulated as a guide to legislative intention<sup>3</sup>. In a particular case different elements of legal policy, for example the safeguarding of personal liberty and the need for state security, may conflict. The court then needs to weigh the conflicting elements and decide which should have predominance<sup>4</sup>. The conflict may, however, be more apparent than real<sup>5</sup>.

1 Eg the principle of construction that if the literal meaning of an Act would permit a person to profit from his own wrong, it may be correct to infer an intention by the legislator that a strained construction should be given in such cases, is derived from the general principle that it is undesirable that a person should be allowed so to profit. As to this principle see further PARA 1453 post.

2 See PARA 1375 ante.

3 For the detailed principles see PARA 1433 et seq post.

4 This is in accordance with the usual technique of statutory interpretation, where criteria other than principles derived from legal policy may also come into consideration: see PARA 1378 ante.

5 See *R v Secretary of State for the Home Department, ex p Cheblak* [1991] 2 All ER 319 at 334, [1991] 1 WLR 890 at 906-907, CA, per Lord Donaldson MR, commenting on the dictum of Mann LJ in *R v Secretary of State for the Home Department, ex p B* (1991) The Independent, 29 January, DC, that the court was aware of the tension which arose between considerations of liberty and the freedom to live where one wished on the one hand and considerations of national security upon the other hand. Although they give rise to tensions at the interface, 'national security' and 'civil liberties' are on the same side; 'in accepting, as we must, that to some extent the needs of national security must displace civil liberties, albeit to the least possible extent, it is not irrelevant to remember that the maintenance of national security underpins and is the foundation of all our civil liberties': *R v Secretary of State for the Home Department, ex p Cheblak* supra at 334 and 906-907 per Lord Donaldson MR.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/B. PRINCIPLES AS TO NATURE OF LAW/1433. Law should not be retrospective.

## **B. PRINCIPLES AS TO NATURE OF LAW**

### **1433. Law should not be retrospective.**

It is a principle of legal policy<sup>1</sup> that an amending enactment should be generally presumed to change the relevant law only from the time of the enactment's commencement<sup>2</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 This general presumption against retrospectivity arises from the nature of legislation. The principle is *lex prospicit non respicit* (law looks forward not back): see 2 Co Inst 292; *Phillips v Eyre* (1870) LR 6 QB 1 at 23. See also *Midland Ry Co v Pye* (1861) 10 CBNS 179 at 191; *Pardo v Bingham* (1869) 4 Ch App 735 at 739-740; *Lauri v Renad* [1892] 3 Ch 402 at 421, CA; *Re Athlumney, ex p Wilson* [1898] 2 QB 547; *Smith v Callander* [1901] AC 297 at 305, HL; *West v Gwynne* [1911] 2 Ch 1 at 15, CA; *Ingle v Farrand* [1927] AC 417 at 428, HL; *Carson v Carson and Stoyek* [1964] 1 All ER 681, [1964] 1 WLR 511; *Carter-Fea v Graham* (1964) 62 LGR 279, DC; *Wijesuriya v Amit* [1966] AC 372, [1965] 3 All ER 701, PC; *R v Fisher* [1969] 1 All ER 100, [1969] 1 WLR 8, CA; *Madden v Madden* [1974] 1 All ER 673, [1974] 1 WLR 247; *London Borough of Hammersmith and Fulham v Harrison* [1981] 2 All ER 588, [1981] 1 WLR 650, CA; *Lewis v Lewis* [1985] AC 828, [1985] 2 All ER 449, HL. However it is also of the nature of legislation that a remedial statute should apply widely, provided no one suffers thereby: see PARA 1442 post. The statement in the text, like others as to the effect of legislation, applies subject to any contrary presumption (see PARA 1285 et seq ante) and to any contrary provision made by the legislation. As to the division into amending enactments and declaratory enactments see PARA 1236 ante; for the meaning of 'commencement' see PARA 1279 ante; and for further discussion of retrospectivity see PARA 1283 et seq ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/B. PRINCIPLES AS TO NATURE OF LAW/1434. Law should be predictable.

### **1434. Law should be predictable.**

It is a principle of legal policy<sup>1</sup> that law should be certain, and therefore predictable<sup>2</sup>; so the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment<sup>3</sup> would give effect to the legislative intention, should presume that the legislator intended to observe this principle. It should therefore strive to reach a construction which was reasonably foreseeable by the parties concerned.

1 As to legal policy see PARAS 1431-1432 ante.

2 *Broome v Cassell & Co Ltd* [1972] AC 1027 at 1054, [1972] 1 All ER 801 at 809, HL, per Lord Hailsham of St Marylebone LC; *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 at 638, [1975] 1 All ER 810 at 836, HL, per Lord Diplock; *Fothergill v Monarch Airlines Ltd* [1981] AC 251 at 279, [1980] 2 All ER 696 at 705, HL, per Lord Diplock; *Pioneer Shipping Ltd v BTP Tioxide Ltd, The Nema* [1980] QB 547 at 564-565, [1980] 3 All ER 117 at 124-125, CA, per Lord Denning MR (on appeal [1982] AC 724, [1981] 2 All ER 1030, HL); *Yew Bon Tew v Kenderaan Bas Mara* [1983] 1 AC 553 at 563, [1982] 3 All ER 833 at 839-840, PC, per Lord Brightman; *Wright v British Railways Board* [1983] 2 AC 773 at 785, [1983] 2 All ER 698 at 705, HL, per Lord Diplock; *Corby District Council v Holst & Co Ltd* [1985] 1 All ER 321 at 326-327, [1985] 1 WLR 427 at 433-434, CA.

3 As to the opposing constructions see PARA 1377 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/B. PRINCIPLES AS TO NATURE OF LAW/1435. Law should be coherent and self-consistent.

### **1435. Law should be coherent and self-consistent.**

It is a principle of legal policy<sup>1</sup> that law should be coherent and self-consistent<sup>2</sup>; so the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment<sup>3</sup> would give effect to the legislative intention, should presume, unless the contrary intention appears<sup>4</sup>, that the legislator intended to observe this principle. The court should therefore strive to avoid adopting a construction which involves accepting that on the point in question the law is not coherent and self-consistent.

1 As to legal policy see PARAS 1431-1432 ante.

2 See eg *Low v Blease* [1975] Crim LR 513 (avoiding multiplying the number of offences that relate to the same factual situations); *Vestey v IRC (Nos 1 & 2)* [1980] AC 1148 at 1193, [1979] 3 All ER 976 at 1000, HL, per Lord Edmund-Davies (refusal to follow decision which would produce 'startling and unattractive' consequences when applied to circumstances never contemplated when it was reached); *NV Slavenburg's Bank v Intercontinental Natural Resources Ltd* [1980] 1 All ER 955 at 975, [1980] 1 WLR 1076 at 1099 (charge not registrable both under the Bills of Sale Acts and the Companies Acts); *Imperial Tobacco Ltd v A-G* [1981] AC 718, [1980] 1 All ER 866, HL (refusal of civil court to usurp function of criminal court and cut across clear legal divisions); *Exxon Corp v Exxon Insurance Consultants International Ltd* [1982] Ch 119 at 130, [1981] 2 All ER 495 at 503 (on appeal [1982] Ch 119, [1981] 3 All ER 241, CA) ('it cannot really have been intended to give further rights of property in words or names which would naturally and properly qualify for excellent protection as registered trade marks or as the subject of passing-off actions'); *R v Lands Tribunal, ex p City of London Corp* [1982] 1 All ER 892 at 894, [1982] 1 WLR 258 at 261, CA, per Lord Denning MR (refusal to state case under the Lands Tribunal Act 1949 s 3(4) on an interlocutory matter because 'there is ample other machinery available for interlocutory matters'); *Horner v Horner* [1982] Fam 90 at 93, [1982] 2 All ER 495 at 497, CA, per Ormrod LJ ('if we have two courts with jurisdiction in a matter like this, there is bound to be confusion and waste of money'); *West Mercia Constabulary v Wager* [1981] 3 All ER 378, [1982] 1 WLR 127 (since magistrates were not empowered to issue a search warrant to deal with the proceeds of an alleged crime held in a bank account, the High Court should fill the gap by using the power to preserve the subject matter of a cause of action which is conferred by RSC Ord 29 r 2); *Re Smalley* [1985] AC 622; sub nom *Smalley v Warwick Crown Court* [1985] 1 All ER 769, HL (where a literal construction of the phrase 'matters relating to trial on indictment' in the Supreme Court Act 1981 s 29(3) would have had the result that no appeal lay from certain Crown Court decisions, the House of Lords avoided this by applying a narrower meaning); *Re D (minors) (Wardship: disclosure)* [1992] 1 FCR 297 at 302 per Sir Stephen Brown P ('In relation to criminal proceedings it is clear that the wardship court should not, as it were, seek to erect a barrier which would prejudice the operation of another bench of the judiciary'); *Re R (a minor) (Wardship: restrictions on publication)* [1994] Fam 254, [1994] 3 All ER 658, CA (wardship judge not permitted to encroach upon jurisdiction of trial judge to restrain reporting of criminal proceedings).

3 As to the opposing constructions see PARA 1377 ante.

4 See eg *Tandon v Trustees of Spurgeon's Homes* [1982] AC 755 at 767, [1982] 1 All ER 1086 at 1094, HL, per Lord Roskill (the Leasehold Reform Act 1967 s 22(1), Sch 3 (as amended) showed there was an intentional overlap between that Act and the Landlord and Tenant Act 1954 Pt II (ss 23-46) (as amended)).

## **UPDATE**

### **1435 Law should be coherent and self-consistent**

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/B. PRINCIPLES AS TO NATURE OF LAW/1436. Law should not be subject to casual change.

**1436. Law should not be subject to casual change.**

It is a principle of legal policy<sup>1</sup> that law should be altered deliberately rather than casually, and that Parliament should not be taken as intending to change either common law<sup>2</sup> or statute law otherwise than by measured and considered provisions<sup>3</sup>. Where, therefore, the legal meaning of an enactment is doubtful, it will be presumed, other things being equal, that it was intended to effect the least alteration of the existing law<sup>4</sup>.

In the case of common law, or Acts embodying common law, the principle is somewhat stronger than in other cases. It is also stronger the more fundamental the change is; so the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment<sup>5</sup> would give effect to the legislative intention, should presume that the legislator intended to observe this principle and should therefore strive to avoid adopting a construction which involves accepting that Parliament contravened the principle.

1 As to legal policy see PARAS 1431-1432 ante.

2 As to the statutory alteration of the common law see also PARA 1438 post.

3 'It is a well-established principle of construction that a statute is not to be taken as effecting a fundamental alteration in the general law unless it uses words that point unmistakably to that conclusion': *National Assistance Board v Wilkinson* [1952] 2 QB 648 at 661, [1952] 2 All ER 255 at 260, DC, per Devlin LJ. See eg *Hawkins v Gathercole* (1855) 6 De GM & G 1 at 19 (privilege of ecclesiastical property); *Nothard v Pepper* (1864) 17 CBNS 39 at 50 (altering the laws of evidence); *Rolfe and Bank of Australasia v Flower, Salting & Co* (1865) LR 1 PC 27 at 48 (affecting existing principles of insolvency law); *Re East London Rly Co, Oliver's Claim* (1890) 24 QBD 507, CA (court's powers under the Regulation of Railways Act 1868 s 41 (repealed)); *Burge v Ashley and Smith* [1900] 1 QB 744 at 750, CA (altering law as to recovery of deposited wages); *Leach v R* [1912] AC 305 at 311, HL, per Lord Atkinson ('the principle that a wife is not to be compelled to give evidence against her husband is deep seated in the common law of this country, and I think if it is to be overturned it must be overturned by a clear, definite and positive enactment, not by an ambiguous one such as the section relied upon in this case'); *Grosvenor Place Estates Ltd v Roberts (Inspector of Taxes)* [1961] Ch 148 at 175, [1961] 1 All ER 341 at 352-353, CA, per Donovan LJ (enactment which empowered the commissioners for the special purposes of the Income Tax Acts to collect tax at source in a particular way held not to take away the existing function of the General Commissioners to collect it in a different way); *Société Co-operative Sidmetal v Titan International Ltd* [1966] 1 QB 828 at 847, [1965] 3 All ER 494 at 503 per Widgery J ('one ought not to assume that this Act has made a substantial alteration in the common law approach to the enforcement of foreign judgments unless that intention can be found in express terms or by necessary implication... the intention cannot be found, and ought not lightly to be assumed'); *Beswick v Beswick* [1968] AC 58, [1967] 2 All ER 1197, HL (refusal to place on the Law of Property Act 1925 s 56 a construction which would overturn the doctrine of privity of contract); *Grangeside Properties Ltd v Collingwoods Securities Ltd* [1964] 1 All ER 143, [1964] 1 WLR 139, CA (equitable doctrine of mortgages preserved in construing Law of Property Act 1925 s 86(2)); *Re Seaford decd, Seaford v Siefert* [1968] P 53 at 68, [1968] 1 All ER 482, CA (refusal to hold that doctrine of relation back of a judicial decision to the beginning of the day on which it was pronounced 'was, as a result of the Supreme Court of Judicature Act 1873 [(repealed: see now the Supreme Court Act 1981)] made applicable, as it were by a side wind, in matrimonial proceedings before the newly constituted High Court'); *Central Asbestos Co Ltd v Dodd* [1973] AC 518 at 549, [1972] 2 All ER 1135 at 1154, HL, per Lord Simon of Glaisdale, and at 556 and 1161 per Lord Salmon (principle that ignorance of the law is no excuse); *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 at 632, [1975] 1 All ER 810 at 831, HL, per Lord Wilberforce, and at 650 and 846 per Lord Simon of Glaisdale (principle that dismissal of action by foreign court on grounds of limitation is no bar to subsequent proceedings in an English court on the same cause of action). See also *Union of South Africa (Minister of Railways and Harbours) v Simmer and Jack Proprietary Mines Ltd* [1918] AC 591 at 596, PC; *Aristoc Ltd v Rysta Ltd* [1945] AC 68 at 93, [1945] 1 All ER 34 at 42, HL. Cf *Hurlbatt v Barnett & Co* [1893] 1 QB 77 at 79, CA; *Earl of Fitzwilliam's Collieries Co v Phillips* [1943] AC 570 at 580, [1943] 2 All ER 346 at 349, HL; *Preston and Area Rent Tribunal v Pickavance* [1953] AC 562 at 575-576, [1953] 2 All ER 438 at 442-443, HL. Cf para 1349 ante (ouster of jurisdiction).

4 *George Wimpey & Co Ltd v British Overseas Airways Corp* [1955] AC 169 at 191, [1954] 3 All ER 661 at 672-673, HL, per Lord Reid.



5 As to the opposing constructions see PARA 1377 ante.

## UPDATE

### 1436 Law should not be subject to casual change

NOTE 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/B. PRINCIPLES AS TO NATURE OF LAW/1437. Law serves the vigilant.

### 1437. Law serves the vigilant.

It is a principle of legal policy<sup>1</sup> that, unless the contrary intention appears, an enactment is to be construed in accordance with the maxim *vigilantibus non dormientibus leges subveniunt* (the laws aid the vigilant, not the sleeping)<sup>2</sup>. It has been held that the courts should be more indulgent to delay by local authorities which represent and serve the public<sup>3</sup> than they were in the nineteenth century towards railway companies, and others acting under powers conferred by private Act<sup>4</sup> 'which were regarded as private undertakers seeking to make profits for themselves'<sup>5</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 This vigilance principle means that coercive statutory powers may be treated as expired or abandoned when not promptly exercised. Where an enactment confers special powers on a person, it is presumed that Parliament intended them to be used expeditiously, particularly where they are at the expense of individuals. This especially applies to powers of compulsory acquisition: see eg *Grice v Dudley Corpn* [1958] Ch 329, [1957] 2 All ER 673.

3 As to the statutory powers of local authorities see PARA 1326 ante.

4 As to private Acts see PARA 1211 ante.

5 *Simpsons Motor Sales (London) Ltd v Hendon Corpn* [1964] AC 1088 at 1118, [1963] 2 All ER 484 at 488, HL, per Lord Evershed.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/B. PRINCIPLES AS TO NATURE OF LAW/1438. Position of the common law.

### 1438. Position of the common law.

It is a principle of legal policy<sup>1</sup> that Acts should not be taken to limit common law rights, or otherwise alter the common law, unless they do so clearly and unambiguously<sup>2</sup> but, if the language is clear, there is no reason why such Acts should be construed differently from others<sup>3</sup>. It is not the case that the common law can be 'developed' by the courts to fill gaps in a statute which cannot be filled by legitimate implication or delegated legislative power<sup>4</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 *Ash v Abdy* (1678) 3 Swan 664; *Arthur v Bokenham* (1708) 11 Mod Rep 148 at 150; *Minet v Leman* (1855) 20 Beav 269 at 278; *R v Morris* (1867) LR 1 CCR 90 at 95; *Re Cuno, Mansfield v Mansfield* (1889) 43 ChD 12 at 17, CA; *Leach v R* [1912] AC 305, HL; *Lord Eldon v Hedley Bros* [1935] 2 KB 1 at 24, CA; *National Assistance Board v Wilkinson* [1952] 2 QB 648 at 661, [1952] 2 All ER 255 at 260, DC, per Devlin J; *Société Cooperative Sidmetal v Titan International Ltd* [1966] 1 QB 828, [1965] 3 All ER 494; *R v Pollock and Divers* [1967] 2 QB 195 at 207-208, [1966] 2 All ER 97 at 103, CCA; *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 at 615, [1975] 1 All ER 810 at 814, HL, per Lord Reid; *Pedro v Diss* [1981] 2 All ER 59 at 64, 72 Cr App Rep 193 at 199, DC; *Stoke-on-Trent City Council v B & Q (Retail) Ltd* [1984] AC 754 at 771-774, HL, [1984] 2 All ER 332 at 338-340, HL, per Lord Templeman; *A-G v Brotherton* [1992] 1 AC 425 at 439, 447. See also PARA 1436 ante.

The early struggles of the common law to establish itself against the claims of the king led judges to attempt to shield it from statutory encroachment. These efforts produced the theory that an Act is presumed not to be intended to change the common law. Thus Coke said that 'it is a maxim in the common law that a statute made in the affirmative, without any negative expressed or implied, doth not take away the common law' (2 Co Inst 200). See also *Dalmer v Barnard* (1567) 1 Plowd 346 at 352; *Harbert's Case* (1584) 3 Co Rep 11b at 13b; *Chudleigh's Case*, *Dillon v Freine* (1595) 1 Co Rep 113b at 134a; *Fermor's Case* (1602) 3 Co Rep 77a at 78a; Bac Abr, Statute (B).

The courts therefore prefer to treat an Act as regulating rather than replacing a common law rule: see eg *Lee v Walker* [1985] QB 1191, [1985] 1 All ER 781, CA (power to suspend committal orders in contempt proceedings). In a contract case Judge John Newey QC said 'it would be surprising if Parliament when limiting the effect of contributory negligence in tort [in the Law Reform (Contributory Negligence) Act 1945] introduced it into contract': *Basildon District Council v JE Lesser (Properties) Ltd* [1985] QB 839 at 849, [1985] 1 All ER 20 at 30.

3 *The Warkworth* (1883) 9 PD 20 at 21; *East Fremantle Corpn v Annois* [1902] AC 213, PC; *Canadian Pacific Rly Co v Roy* [1902] AC 220, PC.

4 *Malone v Comr of Police of the Metropolis* [1980] QB 49, [1979] 1 All ER 256, CA.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/B. PRINCIPLES AS TO NATURE OF LAW/1439. National law and international law.

### 1439. National law and international law.

It is a principle of legal policy<sup>1</sup> that the national law should conform to public international law<sup>2</sup>; so the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment<sup>3</sup> would give effect to the legislative intention, should presume that the legislator intended to observe this principle.

If, however, an enactment is clear in meaning, it must be construed according to that meaning even if this is contrary to the comity of nations or international law, and whatever the effect upon the rights of aliens not within the jurisdiction may be<sup>4</sup>. Moreover, neither comity nor the rule of international law can be invoked to prevent a sovereign state from protecting its revenue laws from abuse by foreigners<sup>5</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 *A-G v BBC* [1981] AC 303 at 354, [1980] 3 All ER 161 at 177-178, HL, per Lord Scarman. This is to be preferred to the view that it is no more than a canon of statutory interpretation: see *R v Secretary of State for the Home Department, ex p Brind* [1991] 1 AC 696 at 747-748; sub nom *Brind v Secretary of State for the Home Department* [1991] 1 All ER 720 at 722-723, HL, per Lord Bridge. In a case on the Warsaw convention, Lord Denning MR put the point even more strongly: 'The Warsaw Convention is an international convention which is binding in international law on all the countries who have ratified it: and it is the duty of these courts to construe our legislation so as to be in conformity with international law and not in conflict with it': *Corocraft Ltd*

*v Pan American Airways Inc* [1969] 1 QB 616 at 653, [1969] 1 All ER 82 at 87, CA. The position is that 'there is a prima facie presumption that Parliament does not intend to act in breach of [public] international law, including therein specific treaty obligations; and if one of the meanings that can reasonably be attributed to the legislation is consonant with the treaty obligations and another or others are not, the meaning which is so consonant is to be preferred': *Salomon v Comrs of Customs and Excise* [1967] 2 QB 116 at 143, [1966] 3 All ER 871 at 875, CA, per Diplock LJ. Cf *Garland v British Rail Engineering Ltd* [1983] 2 AC 751 at 771, [1982] 2 All ER 402 at 415, HL; *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418; sub nom *Maclaine Watson & Co Ltd v Department of Trade and Industry*, *Maclaine Watson & Co Ltd v International Tin Council* [1989] 3 All ER 523, HL; *R v Secretary of State for the Home Department, ex p Brind* supra; and see *Duke v Reliance Systems Ltd* [1988] AC 618; sub nom *Duke v GEC Reliance Ltd* [1988] 1 All ER 626, HL; *Pickstone v Freemans plc* [1989] AC 66, [1988] 2 All ER 803, HL (both cases relating to the EC Treaty (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179)). A rule of public international law which is incorporated by a decision of a competent court then becomes part of the national law: *Thai-Europe Tapioca Service Ltd v Govt of Pakistan* [1975] 3 All ER 961 at 969-970, [1975] 1 WLR 1485 at 1495, CA, per Scarman LJ. As to the construction of treaty Acts see PARA 1426 ante.

3 As to the opposing constructions see PARA 1377 ante.

4 *Cail v Papayanni, The Amalia* (1863) 1 Moo PCCNS 471 at 474 per Dr Lushington; *R v Keyn* (1876) 2 Ex D 63 at 160, CCR; *Niboyet v Niboyet* (1878) 4 PD 1 at 20, CA; *Croft v Dunphy* [1933] AC 156 at 164, PC; *Theophile v Solicitor-General* [1950] AC 186, [1950] 1 All ER 405, HL. See also *Hoani Te Heuheu Tukino v Aotea District Maori Land Board* [1941] AC 308, [1941] 2 All ER 93, PC; *Colloco Dealings Ltd v IRC* [1962] AC 1, [1961] 1 All ER 762, HL; *Cheney v Conn (Inspector of Taxes)* [1968] 1 All ER 779 at 780-781, [1968] 1 WLR 242 at 245 per Ungoed-Thomas J; *Woodend (KV Ceylon) Rubber and Tea Co Ltd v IRC* [1971] AC 321, [1970] 2 All ER 801, PC; *R v Secretary of State for The Home Department, ex p Singh* [1976] QB 198 at 207, [1975] 2 All ER 1081 at 1083, CA, per Lord Denning MR.

5 *Colloco Dealings Ltd v IRC* [1962] AC 1, [1961] 1 All ER 762, HL, where an Act relating to dividend stripping was held to deprive persons outside the jurisdiction of double taxation relief conferred by a previous Act giving effect to an international agreement.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/B. PRINCIPLES AS TO NATURE OF LAW/1440. Presumption of correctness.

#### **1440. Presumption of correctness.**

Unless the contrary intention appears, an enactment by implication imports the presumption of correctness, arising under the principle of legal policy<sup>1</sup> expressed in the maxim *omnia praesumuntur rite et solemniter esse acta* (all things are presumed to be correctly and solemnly done)<sup>2</sup>. By virtue of the presumption, words in an Act must be taken to be used correctly and exactly, and the onus on those who assert that they are used loosely or inexactly is a heavy one<sup>3</sup>. The presumption requires it to be assumed, in the absence of evidence to the contrary, that an Act is properly passed, or delegated legislation correctly made<sup>4</sup>. The presumption also applies to the administration of legislation<sup>5</sup>; it must not be assumed that the powers conferred by an Act on the executive will be abused<sup>6</sup>.

The presumption applies to judicial functions<sup>7</sup> but is not strong enough to be relied on exclusively in proving the existence of a necessary element in the commission of an offence<sup>8</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 The presumption of correctness was described by Viscount Simonds LC as 'one of the fundamental maxims of the law': *Morris v Kanssen* [1946] AC 459 at 475, [1946] 1 All ER 586 at 592, HL. It is of great importance in the operation of statutes.

3 *Spillers Ltd v Cardiff Borough Assessment Committee and Pritchard Cardiff (Revenue Officer)* [1931] 2 KB 21; *New Plymouth Corp v Taranaki Electric-Power Board* [1933] AC 680 at 682, PC.

4 *Akar v A-G of Sierra Leone* [1970] AC 853, [1969] 3 All ER 384, PC.

5 Lord Russell of Killowen CJ said of the administration of local government byelaws that 'credit ought to be given to those who have to administer them that they will be reasonably administered': *Kruse v Johnson* [1898] 2 QB 91 at 99.

6 *R v Halliday* [1917] AC 260 at 273, HL, per Lord Atkinson. The presumption is that official acts purported to be done under an enactment were indeed done in accordance with the enactment: *R v IRC, ex p TC Coombs & Co (a firm) v IRC* [1991] 2 AC 283 at 299-300, [1991] 3 All ER 623 at 635-636, HL (functions of General Commissioner under the Taxes Management Act 1970 s 20(7)). This also applies to any question of whether a person was duly appointed to a public office: *Berryman v Wise* (1791) 4 Term Rep 366; *R v Borrett* (1833) 6 C & P 124; *Campbell v Wallsend Slipway and Engineering Co Ltd* [1977] Crim LR 351. As to the administration of an Act see PARA 1325 et seq ante. As to judicial review in the nature of the old writ of quo warranto see PARA 1358 ante.

7 Eg it will be assumed, in the absence of evidence to the contrary, that justices exercised a statutory discretion as to costs reasonably: *R v Uxbridge Justices, ex p Metropolitan Police Comr* [1981] QB 829 at 842, [1981] 3 All ER 129 at 137, CA. In relation to the issue of a search warrant by a circuit judge, see *R v IRC, ex p Rossminster Ltd* [1980] AC 952 at 1009, [1980] 1 All ER 80 at 91, HL, per Lord Diplock.

8 Referring to the maxim on which the presumption is based, Lord Parker CJ said 'I think for myself that one ought to take very great care in a criminal case as to the length one goes in applying that presumption': *Scott v Baker* [1969] 1 QB 659 at 672, [1968] 2 All ER 993 at 999, DC. See also *Dillon v R* [1982] AC 484, [1982] 1 All ER 1017, PC; *R v Dadson* [1983] Crim LR 540. However it has been held that, in the absence of evidence to the contrary, the court will presume that a mechanical or electronic device used for determining whether breach of a statutory duty had occurred was in proper working order at the material time: *Castle v Cross* [1985] 1 All ER 87, [1984] 1 WLR 1372, DC (automatic breath-testing device).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/B. PRINCIPLES AS TO NATURE OF LAW/1441. De minimis principle.

#### **1441. De minimis principle.**

Unless the contrary intention appears, an enactment by implication<sup>1</sup> imports the principle of legal policy<sup>2</sup> expressed in the maxim *de minimis non curat lex* (the law does not concern itself with trifling matters)<sup>3</sup>; so if an enactment is expressed to apply to matters of a certain description it will not apply where the description is satisfied only to a very small extent<sup>4</sup>.

The de minimis principle, combined with questions of practicality, underlies the rule that the law generally disregards fractions of a day<sup>5</sup>. However the principle looks to the substance, so that if a matter at first sight trifling proves to embody a point of substance, the principle does not apply<sup>6</sup>.

The rule that fractions of a day will normally be disregarded means that when, in relation to a period laid down by statute, the occurrence of a particular event starts or stops the period running, then in computing the period either the whole of the day on which the event occurs must be included (the inclusive rule) or the whole of it must be excluded (the exclusive rule). The period thus begins or ends not at the instant the relevant event occurs but either at the commencement or the termination of the day on which it occurs. The inclusive rule applies where it is a question of some general provision, such as an Act of Parliament, a lease or a licence, coming into effect by reference to the relevant event<sup>7</sup>. The exclusive rule applies in the case of a specified period before the end of which some single act, such as the serving of a notice, may be done. This is because, if the first day were counted in, the time available for doing the act would in effect be shorter than the specified period<sup>8</sup>.

The de minimis principle applies to departures from the wording of prescribed forms<sup>9</sup>. It is sometimes recognised by the insertion of provisions in Acts making express what it would otherwise have been open to the court to infer<sup>10</sup>.

1 As to implications in enactments see PARA 1234 ante.

2 As to legal policy see PARAS 1431-1432 ante.

3 Cro Eliz 353; Hob 88.

4 See eg *Hayes (Valuation Officer) v Loyd* [1985] 2 All ER 313, [1985] 1 WLR 714, HL, following *Wimborne and Cranborne RDC v East Dorset Assessment Committee* [1940] 2 KB 420, [1940] 3 All ER 201, CA (the General Rate Act 1967 s 26(3) (repealed) excepted from rates 'land used as a racecourse'; land only rarely so used held not within this phrase). Cf *Farmer (Valuation Officer) v Buxted Poultry Ltd* [1993] AC 369, [1993] 1 All ER 117, HL (provender mill of which 6% to 8% of the output was delivered to other farms held not to be used 'solely' in connection with agricultural operations carried out on its own farm for the purposes of the definition of 'agricultural buildings' in the General Rate Act 1967 s 26(4) (repealed)). For other examples of the application of the maxim (whether referred to expressly or not) see *Squires v Botwright* [1972] RTR 462 at 468; *Peake v Automotive Products Ltd* [1978] QB 233, [1978] 1 All ER 106, CA; *Ministry of Defence v Jeremiah* [1980] QB 87 at 98, [1979] 3 All ER 833 at 836, CA; *Customs and Excise Comrs v J H Corbitt (Numismatists) Ltd* [1981] AC 22 at 52, [1980] 2 All ER 72 at 73, HL; *R v Gateshead Justices, ex p Usher* [1981] Crim LR 491; *R v Saville* [1981] QB 12 at 18, [1980] 1 All ER 861 at 865; *R v Tottenham Justices, ex p Joshi* [1982] 2 All ER 507, [1982] 1 WLR 631, DC; and see *Gill v El Vino Co Ltd* [1983] QB 425, [1983] 1 All ER 398, CA; *Customs and Excise Comrs v Viva Gas Appliances Ltd* [1984] 1 All ER 112, [1983] 1 WLR 1445, HL; *Otter v Norman* [1989] AC 129, [1988] 2 All ER 897, HL. For its application in criminal law see *Delaroy-Hall v Tadman* [1969] 2 QB 208, [1969] 1 All ER 25; *R v Mears* [1975] Crim LR 155; *Hawkins v Roots* [1975] Crim LR 521; *R v Boyesen* [1982] AC 768 at 777, [1982] 2 All ER 161 at 166, HL, per Lord Scarman.

5 *Clayton's Case* (1585) 5 Co Rep 1a at 1b, where a lease dated 26 May was expressed to run for three years 'from henceforth'. It was held that the time of day of the delivery of the lease was immaterial, 'for the law in this computation doth reject all fractions and divisions of a day for the uncertainty, which is always the mother of confusion and contention'.

6 *Godson v Sanctuary* (1832) 4 B & Ad 255. See also *Thomas v Desanges* (1819) 2 B & Ald 586; *Sadler v Leigh* (1815) 4 Camp 195; *Saunderson v Gregg* (1821) 3 Stark 72; *Campbell v Strangeways* (1877) 3 CPD 105; *Clarke v Bradlaugh* (1881) 8 QBD 63; *Alphafield Ltd (t/a Apex Leisure Hire) v Barratt* [1984] ICR 452, [1984] 3 All ER 795, EAT. Cf *Re Palmer (decd) (a debtor)* [1994] Ch 316, [1994] 3 All ER 835, CA.

7 This is to ensure that the effect of the provision is not cut down by deferring its commencement until some hours after the triggering event occurs: see eg *Clayton's Case* (1585) 5 Co Rep 1a at 1b, where it was held that the words 'from henceforth' meant from the beginning of the day of delivery of the lease. As to the commencement of Acts see PARA 1279 ante.

8 See eg *Goldsmiths' Co v West Metropolitan Ry Co* [1904] 1 KB 1 at 4. The distinctions between the inclusive and exclusive rule have, however, been blurred. In *Stewart v Chapman* [1951] 2 KB 792, [1951] 2 All ER 613, DC, the exclusive rule was applied to a penal provision, holding good a notice of intended prosecution under the Road Traffic Act 1930 s 21 (repealed). In *Cartwright v MacCormack* [1963] 1 All ER 11 at 13, [1963] 1 WLR 18 at 21, CA, the exclusive rule was described by Harman LJ as an ordinary rule of construction. However it is submitted that the reasoning outlined in the text for applying the inclusionary rule in certain cases is sound and should be upheld.

9 *Davis v Burton* (1883) LR 11 QBD 537 at 540 per Brett MR; *Roberts v Roberts* (1883) 13 QBD 794 at 803 per Brett MR; *Ex p Stanford* (1886) LR 17 QBD 259; *Brandon Hill Ltd v Lane* [1915] 1 KB 250.

10 Eg the Offences against the Person Act 1861 s 44 (amended by the Criminal Justice Act 1988 s 170, Sch 15 paras 2, 3, Sch 16) recognises that it is a ground for the dismissal by magistrates of a complaint of assault or battery preferred by or on behalf of the party aggrieved that the assault or battery was 'so trifling as not to merit any punishment': see *Ellis v Burton* [1975] Crim LR 32, which appears to have been decided upon a misreading of the section.

## UPDATE

### 1441 De minimis principle

NOTE 10--1861 Act s 44 further amended: Courts Act 2003 Sch 8 para 41.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/C. PRINCIPLES REGARDING JUSTICE AND FAIRNESS/1442. Law should be just and fair.

### **C. PRINCIPLES REGARDING JUSTICE AND FAIRNESS**

#### **1442. Law should be just and fair.**

It is a principle of legal policy<sup>1</sup> that law should be just and fair, and that court decisions should further the ends of justice<sup>2</sup>. The court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment<sup>3</sup> would give effect to the legislative intention, should presume that the legislator intended to observe this principle. The court should therefore strive to avoid adopting a construction that leads to injustice or unfairness<sup>4</sup>. Ideas of what is just and fair vary over time and between persons<sup>5</sup>; nevertheless the courts are always concerned to see that there is not a failure of justice<sup>6</sup> and that the well of justice remains clear<sup>7</sup>; so the literal meaning of an enactment may be disregarded if it produces an unjust result<sup>8</sup>. Sometimes injustice to someone will arise whichever way the decision goes, and here the court must, as usual<sup>9</sup>, carry out a balancing exercise<sup>10</sup>. The courts nowadays frequently use the concept of fairness as the standard of just treatment<sup>11</sup>.

The principle that law should be just means that Parliament is taken to intend, when conferring a discretionary power, that it is to be exercised justly; so where an apparently unfettered discretion is conferred by statute on a public authority it is to be inferred that Parliament intended the discretion to be exercised in the same high-principled way as is expected by the court of its own officers<sup>12</sup>.

In order to promote justice, construction by the equity, or the extension of remedial statutes to cases which were not covered by their words but were thought to be within the mischief against which they were aimed, used to be common in the case of old statutes if the words of the statutes were not plainly against such a construction<sup>13</sup>. This method of construction, however, is not now favoured by the courts and it has not been applied to modern Acts<sup>14</sup>. Similarly, the courts have in the past given equitable relief from provisions of old statutes by seeking special exceptions from the clear terms of their provisions<sup>15</sup>, but this has not been done in the case of modern Acts, which are framed with a view to equitable as well as legal principles<sup>16</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 Justice here includes social justice: *Williams & Glyn's Bank Ltd v Boland*[1981] AC 487 at 510, [1980] 2 All ER 408 at 416-417, HL.

3 As to the opposing constructions see PARA 1377 ante.

4 In its legislation, Parliament is presumed to intend to follow legal policy in this regard and act justly and reasonably: *IRC v Hinchy*[1960] AC 748 at 768, [1960] 1 All ER 505 at 512, HL. See also *Mangin v IRC*[1971] AC 739 at 746, [1971] 1 All ER 179 at 182, PC; *Nothman v London Borough of Barnet* [1979] ICR 111 at 120, [1979] 1 All ER 142 at 148, HL; *Miles v Wakefield Metropolitan District Council* [1985] ICR 363 at 372, [1985] 1 All ER 905 at 911, CA; on appeal [1987] AC 539, [1987] 1 All ER 1089, HL. See further PARA 1443 et seq post.

5 Injustice has been judicially described as not 'a practical test' (*Prudential Assurance Co Ltd v Newman Industries Ltd (No 2)*[1982] Ch 204 at 221, [1982] 1 All ER 354 at 366, CA) and as meaning different things to different persons (*Estmanco (Kilner House) Ltd v Greater London Council*[1982] 1 All ER 437 at 444, [1982] 1

WLR 2 at 11 per Sir Robert Megarry V-C). This may be true, but a judge of all people cannot be heard to say that he does not know what justice is. He must rely on 'impression and instinctive judgment as to what is fair and just': *Dorset Yacht Co Ltd v Home Office* [1970] AC 1004 at 1054, [1970] 2 All ER 294 at 321, HL. See also *Warden v Warden* [1982] Fam 10 at 15, [1981] 3 All ER 193 at 196, CA.

6 *R v Ward* (1848) 2 Car & Kir 759.

7 *A-G v English* [1983] 1 AC 116 at 125, [1982] 2 All ER 903 at 909, DC (revsd without affecting this dictum [1983] 1 AC 116, [1982] 2 All ER 903, HL).

8 See eg *De Vesci (Evelyn Viscountess) v O'Connell* [1908] AC 298 at 307-308, HL, per Lord Ashbourne and at 310 per Lord Macnaghten; *Coutts & Co v IRC* [1953] AC 267 at 281, [1953] 1 All ER 418 at 421, HL, per Lord Reid; *Customs and Excise Comrs v Mechanical Services (Trailer Engineers) Ltd* [1979] 1 All ER 501 at 508, [1979] 1 WLR 305 at 313, CA, per Browne LJ. As to literal construction see PARA 1470 post.

9 See PARA 1378 ante.

10 See eg *Pickett v British Rail Engineering Ltd* [1980] AC 136 at 150, [1979] 1 All ER 774 at 781, HL, per Lord Wilberforce.

11 See eg *Cardshops Ltd v John Lewis Properties Ltd* [1983] QB 161 at 167, [1982] 3 All ER 746 at 751, CA, per Waller LJ. As to fairness as applied in judicial review applications see PARA 1358 ante.

12 *R v Tower Hamlets London Borough Council, ex p Chetnik Developments Ltd* [1988] AC 858 at 876-877, [1988] 1 All ER 961 at 970, HL, per Lord Bridge.

13 *Vernon's Case* (1572) 4 Co Rep 1a at 4a; *Turtle v Hartwell* (1795) 6 Term Rep 426 at 429; *Johnes v Johne* (1814) 3 Dow 1 at 15, HL; *Lyde v Barnard* (1836) 1 M & W 101 at 113-114; *Hay v Perth Lord Provost and Magistrates* (1863) 4 Macq 535 at 544, HL; *Shuttleworth v Le Fleming* (1865) 19 CBNS 687 at 703; *Re Bolton Estates, Russell v Meyrick* [1903] 2 Ch 461, CA. For recent dicta suggesting that older statutes need to be construed in a different way see *Wills v Bowley* [1983] 1 AC 57 at 91, [1982] 2 All ER 654 at 672-673, HL, per Lord Bridge of Harwich.

14 *Brandling v Barrington* (1827) 6 B & C 467 at 475; *A-G v Sillem* (1864) 2 H & C 431 at 532.

15 See *A-G v Day* (1749) 1 Ves Sen 218 at 221; *Curlewis v Earl of Mornington* (1857) 7 E & B 283; *Sturgis v Darell* (1860) 29 LJ Ex 472.

16 *Edwards v Edwards* (1876) 2 ChD 291 at 297, CA; *Re Monolithic Building Co, Tacon v Monolithic Building Co* [1915] 1 Ch 643 at 665, CA.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/C. PRINCIPLES REGARDING JUSTICE AND FAIRNESS/1443. Judge should be impartial.

#### **1443. Judge should be impartial.**

Unless the contrary intention appears, an enactment by implication imports the principle of legal policy<sup>1</sup> embodied in the maxim *nemo debet esse iudex in propria causa* (no one should be judge in his own cause)<sup>2</sup>. The principle is now applied in a wider sense than the literal meaning of the maxim indicates. This wider sense may be rendered as: no one acting judicially should have, or appear likely to have, a bias in favour of one side or the other, whatever the reason for the bias may be<sup>3</sup>. The principle has been further extended, and now applies to all decision-making within the field of public law<sup>4</sup>; so whenever an enactment provides for the appointment of any judicial officer it will be taken to imply that during his continuance in office his independence is to be preserved<sup>5</sup>.

The most obvious suspicion of bias arises where the decision-maker has a pecuniary interest in what is at stake, when his decision is likely to be declared void<sup>6</sup>. In less serious cases the

decision may be treated as voidable only<sup>7</sup>. Whether or not bias actually exists is immaterial where there is reasonable cause for suspecting it<sup>8</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 This had long been considered a natural law principle. In the seventeenth century, when it was still alleged that an Act contrary to natural law was invalid (for the present rules as to the validity of legislation see PARA 1202 ante), it was said that 'Even an Act of Parliament made against natural equity, as, to make a man judge in his own case, is void in itself': *Day v Savadge* (1614) Hob 85. This dictum was cited by Willes J in *Lee v Bude and Torrington Junction Railway Co* (1871) LR 6 CP 576 at 582, when he said it stood as a warning, rather than an authority to be followed.

3 For examples of the application of this principle see *R v Hertfordshire Justices* (1845) 6 QB 753; *Dimes v Grand Junction Canal Co* (1852) 3 HL Cas 759; *R v Rand* (1866) LR 1 QB 230; *Re Lawson* (1941) 57 TLR 315; *R v Bodmin Justices, ex p McEwen* [1947] 1 KB 321 at 325, [1947] 1 All ER 109 at 111, DC; *R v East Kerrier Justices* [1952] 2 QB 719, [1952] 2 All ER 144, DC; *R v Camborne Justices, ex p Pearce* [1955] 1 QB 41, [1954] 2 All ER 850, DC.

4 See eg *Steeple v Derbyshire County Council* [1984] 3 All ER 468, [1985] 1 WLR 256 (planning permission void where planning authority had contracted, in another capacity, to procure it). As to the general principles regulating such decision-making see PARA 1330 et seq ante.

5 *R v Cornwall County Council, ex p Cornwall and Isles of Scilly Guardians ad Litem and Reporting Officers Panel* [1992] 2 All ER 471 at 479, [1992] 1 WLR 427 at 435-436.

6 See eg *R v Rand* (1866) LR 1 QB 230.

7 *R v Rand* (1866) LR 1 QB 230. The fact that suspicion of bias is directed to only one person out of a large decision-making body will not save the decision: see eg *R v Hendon RDC, ex p Chorley* [1933] 2 KB 696.

8 See *Metropolitan Properties Co (FGC) Ltd v Lannon* [1969] 1 QB 577, [1968] 3 All ER 304, CA (chairman of rent assessment committee had previously shown opposition to one of the parties). Cf *Hannam v Bradford Corp* [1970] 2 All ER 690, [1970] 1 WLR 937, CA; *R v Altrincham Justices, ex p Pennington* [1975] QB 549, [1975] 2 All ER 78, DC; *R v Secretary of State for the Environment, ex p Norwich City Council* [1982] QB 808 at 826, 837-838; sub nom *Norwich City Council v Secretary of State for the Environment* [1982] 1 All ER 737 at 746, 755, CA. 'It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done': *R v Sussex Justices, ex p McCarthy* [1924] 1 KB 256 at 259 per Lord Hewart CJ. See further *R v Gough* [1993] AC 646, [1993] 2 All ER 724, HL, where the case when a person acting in a judicial capacity has a direct pecuniary interest, whereby he is automatically disqualified from sitting, was distinguished from other cases, where the test is whether, having regard to the relevant circumstances, there is a real danger of bias. The term 'danger' was preferred to 'likelihood' as indicating that the test is one of possibility of bias rather than probability; and it was pointed out that the continued citation of Lord Hewart CJ's maxim may lead to the erroneous impression that 'it is more important that justice should appear to be done than that it should in fact be done': see *R v Gough* supra at 673 and 740 per Lord Woolf. See also *R v Inner West London Coroner, ex p Dallaglio* [1994] 4 All ER 139, CA (coroner using pejorative language to describe survivors and bereaved relatives of victims of the *Marchioness* disaster).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/C. PRINCIPLES REGARDING JUSTICE AND FAIRNESS/1444. Right to be heard.

#### **1444. Right to be heard.**

Unless the contrary intention appears, an enactment by implication imports the principle of legal policy<sup>1</sup> embodied in the maxim *audi alteram partem* (hear the other side)<sup>2</sup>. However before the court steps in to supplement an Act's provisions in this regard it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation<sup>3</sup>. The principle does not mean that a



party can require to be 'heard' in any manner he chooses<sup>4</sup>. Nor is there any breach of the principle where the process of justice has not itself proved defective<sup>5</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 *Boswel's Case* (1605) 6 Co Rep 48b at 52a; *Re Brook* (1864) 16 CBNS 403 at 416 per Erle CJ. See eg *Ridge v Baldwin* [1964] AC 40, [1963] 2 All ER 66, HL (holder of a public office removable only for cause could not be dismissed without notice of the reason and an opportunity to be heard); *R v Corby Juvenile Court, ex p M* [1987] 1 All ER 992, [1987] 1 WLR 55 (right not to be deprived of contact with one's child without a hearing). See also *Cooper v Wandsworth District Board of Works* (1863) 14 CBNS 180 at 187.

3 *Wiseman v Borneman* [1971] AC 297 at 308, [1969] 3 All ER 275 at 277, HL, per Lord Reid.

4 *Banin v MacKinlay (Inspector of Taxes)* [1985] 1 All ER 842, 58 TC 398, CA.

5 In this connection a litigant must be identified with his or her legal adviser. If the adviser alone proves deficient the litigant's remedy (if any) can only be against him, since the state's administration of justice is not at fault: see eg *R v Secretary of State for the Home Department, ex p Al-Mehdawi* [1990] 1 AC 876; sub nom *Al-Mehdawi v Secretary of State for the Home Department* [1989] 3 All ER 843, HL. As to the detailed requirements which the principle imposes see JUDICIAL REVIEW vol 61 (2010) PARA 639 et seq. As to the cases where statutory functions may lawfully be delegated see PARA 1331 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/C. PRINCIPLES REGARDING JUSTICE AND FAIRNESS/1445. Double jeopardy.

#### 1445. Double jeopardy.

Unless the contrary intention appears, an enactment by implication imports the principle of legal policy<sup>1</sup> embodied in the maxim *bona fides non patitur, ut bis idem exigatur* (good faith does not suffer the same thing to be exacted twice)<sup>2</sup>. One aspect of the application of this principle is the rule that two actions cannot be brought in respect of the same cause<sup>3</sup>.

Where an act or omission constitutes an offence under two or more enactments, or both under an enactment and at common law, an alleged offender, unless the contrary intention appears, is liable to be prosecuted and punished under either or any of those enactments or at common law, but must not be punished more than once for the same offence<sup>4</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 This maxim is derived from the civil law. The principle is also found in the maxim *nemo debet bis vexari* (no one should be proceeded against twice over): *Sperry's Case* (1589) 5 Co Rep 61a. The principle has in part given rise to doctrines such as res judicata and issue estoppel: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1272 et seq.

3 See *Buckland v Palmer* [1984] 3 All ER 554, [1984] 1 WLR 1109, CA, where the court avoided injustice by allowing the first action to be reopened.

4 See the Interpretation Act 1978 s 18. This follows the common law rule: see *Wemyss v Hopkins* (1875) LR 10 QB 378. For the meaning of 'the same offence' see *R v Thomas* [1950] 1 KB 26, [1949] 2 All ER 662, CCA. As to the effect of agreeing that two charges shall be heard together see *Williams v Hallam* [1943] 112 LJKB 353. See also *R v Hall* [1891] 1 QB 747 at 753; *United States of America Government v Jennings* [1983] 1 AC 624 at 644; sub nom *Jennings v United States Government* [1982] 3 All ER 104 at 117, HL. See also PARA 1363 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/C. PRINCIPLES REGARDING JUSTICE AND FAIRNESS/1446. volenti principle.

#### **1446. volenti principle.**

Unless the contrary intention appears, an enactment by implication imports the principle of legal policy<sup>1</sup> known as the volenti principle, embodied in the maxim *volenti non fit injuria* (what one consents to cannot amount to a legal injury)<sup>2</sup>. In legislation the principle is sometimes expressly stated to apply<sup>3</sup> or not apply<sup>4</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 The maxim is mainly applied in tort; though the law generally has tended to be unsympathetic to those who freely agree to undergo a risk and then complain when it is realised: see eg *Yarmouth v France* (1887) 19 QBD 647 at 653. Mere knowledge of a risk, particularly by an employee, is not taken to establish consent to running it: *Thomas v Quartermaine* (1887) 18 QBD 685; *Smith v Baker* [1891] AC 325; *Dann v Hamilton* [1939] 1 KB 509; *Titchener v British Railways Board* [1983] 3 All ER 770 at 776, [1983] 1 WLR 1427 at 1434; HL; *Morris v Murray* [1991] 2 QB 6, [1990] 3 All ER 801, CA.

3 See eg the Occupiers' Liability Act 1957 s 2(5), which applies the principle by referring to 'risks willingly accepted by' a visitor to land: see *Simms v Leigh Rugby Football Club Ltd* [1969] 2 All ER 923; *White v Blackmore* [1972] 2 QB 651, [1972] 3 All ER 158, CA; *Titchener v British Railways Board* [1983] 3 All ER 770 at 776, [1983] 1 WLR 1427 at 1434, HL.

4 See eg the Road Traffic Act 1988 s 149(3); and see *Pitts v Hunt* [1991] 1 QB 24, [1990] 3 All ER 344, CA.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/C. PRINCIPLES REGARDING JUSTICE AND FAIRNESS/1447. Act of God.

#### **1447. Act of God.**

Unless the contrary intention appears, an enactment by implication imports the principle of legal policy<sup>1</sup> embodied in the maxim *actus Dei nemini facit injuriam* (an act of God causes legal injury to no one)<sup>2</sup>; so unless strict liability is intended, a statutory duty does not apply where rendered incapable of fulfilment by act of God<sup>3</sup>. Even where the statutory liability is 'strict', it may still not extend to acts of God<sup>4</sup>; but where the statutory duty is intended to have the effect of making the person concerned an insurer, it is likely that it does so extend<sup>5</sup>. A statutory offence is subject to an implied exception where the forbidden act is caused by inevitable accident<sup>6</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 The term 'act of God' connotes some natural calamity or other event which cannot be avoided and is no one's fault. Equivalent terms are *damnum fatale*, *vis major*, and inevitable accident. It is unjust that a person should suffer legal detriment by reason of an act of God; it therefore falls within the principle that Parliament does not intend injustice: see PARA 1442 ante.

3 *R v Leicestershire Justices* (1850) 15 QB 88 (service of notice on respondent dispensed with by her death). As to impossibility see also PARA 1448 post; and *Campbell v Earl of Dalhousie* (1868) LR 1 Sc & D 259 at 269; *Harding v Price* [1948] 1 KB 695 at 701, [1948] 1 All ER 283 at 284, DC. Strict liability was held to be imposed in *J & J Makin Ltd v London and North Eastern Ry Co* [1943] KB 467, [1943] 1 All ER 645, CA, but not in *Brown v National Coal Board* [1962] AC 574, [1962] 1 All ER 81, HL, or *Brazier v Sipton Rock Co Ltd* [1962] 1 All ER 955, [1962] 1 WLR 471.

4 In *Great Western Rly Co v Owners of SS Mostyn* [1928] AC 57, HL, it was held that the Harbours, Docks and Piers Clauses Act 1847 s 74 rendered the owners liable for damage caused by a ship that was still manned, thus distinguishing *River Wear Comrs v Adamson* (1877) 2 App Cas 743, HL, where the ship causing damage had been abandoned in a storm.

5 Some person has to bear the financial cost of an Act of God. Private Acts often allocate such responsibility to the promoters: see eg *J & J Makin Ltd v London and North Eastern Rly Co* [1943] KB 467, [1943] 1 All ER 645, CA (canal proprietors made liable for damage to lands or buildings 'by the breach of any reservoir... or of any of the locks or works... or from any other accident').

6 *Sweet v Parsley* [1970] AC 132 at 162-163, [1969] 1 All ER 347 at 361, HL, per Lord Diplock.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/C. PRINCIPLES REGARDING JUSTICE AND FAIRNESS/1448. Impotence, impossibility and necessity.

#### **1448. Impotence, impossibility and necessity.**

Unless the contrary intention appears, an enactment by implication imports the principles of legal policy<sup>1</sup> embodied in the maxims *impotentia excusat legem* (the law does not punish a person for not doing what he lacked power to do, or for being in a situation he was powerless to avoid)<sup>2</sup>, *lex non cogit ad impossibilia* (law does not compel the impossible)<sup>3</sup>, and *necessitas non habet legem* (necessity knows no law)<sup>4</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 The principle may be expressly stated in an enactment: see eg the 'Pelican' Pedestrian Crossings Regulations and General Directions 1987, SI 1987/16, regs 12(2), 13(b), which make it an offence to park in the approach limits to a pelican crossing, but provide a defence in terms of circumstances beyond the driver's control. In *Oakley-Moore v Robinson* [1982] RTR 74, DC, it was held that this did not exonerate 'parking' caused by running out of petrol, an illustration of the fact that the principle does not extend to self-induced incapacity (see *DPP v Beard* [1920] AC 479 at 506, HL, per Lord Birkenhead LC (drunkenness); *R v Kingston* [1994] 3 All ER 353, [1994] 3 WLR 519, HL (laced drink)). It seems, however, that the principle should have excused the defendant convicted of the statutory offence of being 'found drunk' on a highway in *Winzar v Chief Constable of Kent* (1983) Times, 28 March (intoxicated person in hospital waiting-room carried out by police officers and left by them on highway).

3 See *R v St Pancras (Churchwardens)* (1834) 1 Ad & E 80 at 102 per Patteson J ('the law compels no impossibility'); *Hammond v Vestry of St Pancras* (1874) LR 9 CP 316 at 322 (duty to clean sewers did not extend to things no reasonable care and skill could obviate); *United Dairies (London) Ltd v Beckenham Corp'n* [1963] 1 QB 434 at 445, [1961] 1 All ER 579 at 583, DC (distributor could not comply with statutory duty to ensure full milk bottles were clean without illegally tampering with their seals). The principle means that where a person has statutory power to impose conditions, these must not be such as are impossible to perform: *MV Yorke Motors (a firm) v Edwards* [1982] 1 All ER 1024 at 1027, [1982] 1 WLR 444 at 448-449, HL, per Lord Diplock (financial condition which was impossible for defendant to fulfil by reason of impecuniosity). See also *Re Bristol & North Somerset Rly* (1877) 3 QBD 10 at 13; *R v Dyott* (1882) 9 QBD 47; *IRC v Duchess of Portland* [1982] Ch 314 at 318, [1982] 1 All ER 784 at 790; *BP Exploration Co (Libya) Ltd v Hunt (No 2)* [1983] 2 AC 352 at 374, [1982] 1 All ER 925 at 992, HL. An impossibility cannot be pleaded where it was self-induced: see eg *R v Reynolds* [1976] Crim LR 385.

4 The meaning is that necessity overrides law, where the necessity is extreme and justifies this (see eg *Johnson v Phillips* [1975] Crim LR 580 (police request to drive wrong way up one way street); contrast *Buckoke v Greater London Council* [1971] 1 Ch 655, [1971] 2 All ER 254, CA (driver of fire engine not justified in passing red light), and *Lewis v Dickson* [1976] Crim LR 442 (factory gateman causing highway obstruction by working to rule)). The principle includes duress which 'arises from the wrongful threats or violence of another human being... [whereas] necessity arises from any other objective dangers threatening the accused... duress is only that species of the genus necessity which is caused by wrongful threats': *R v Howe* [1987] AC 417 at 429, [1987] 1 All ER 771 at 777, HL, per Lord Hailsham of St Marylebone LC. A statutory offence is subject to an implied exception where the forbidden act is done under duress (*Sweet v Parsley* [1970] AC 132 at 163, [1969]

1 All ER 347 at 361, HL, per Lord Diplock) or other necessity (*R v Conway* [1989] QB 290 at 297, [1988] 3 All ER 1025 at 1029, CA, per Woolf LJ). In procedural matters the court will readily allow a plea of duress or other necessity: see eg *R v Inns* [1975] Crim LR 182; *R v Huntingdon Crown Court, ex p Jordan* [1981] Crim LR 641.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/C. PRINCIPLES REGARDING JUSTICE AND FAIRNESS/1449. Agency.

#### **1449. Agency.**

Unless the contrary intention appears, an enactment by implication imports the principle of legal policy<sup>1</sup> embodied in the maxim *qui facit per alium facit per se* (who acts through another, [in law] acts himself)<sup>2</sup>. This means that where an enactment refers to a person it is taken as intended to include that person's agent authorised either expressly or by implication<sup>3</sup>. A body corporate, being an artificial person, can act only through its human agents<sup>4</sup>.

Where an enactment requires something (such as the serving of a notice) to be done to, or in relation to, a person, the question may arise whether this is satisfied if it is done to, or in relation to, the agent of that person. There is no general rule, and it is matter of gleaning the intention from the words used<sup>5</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 Co Litt 258a.

3 The general position was stated by Atkin J: 'while prima facie a principal is not to be made criminally responsible for the acts of his servants, yet the legislature may prohibit an act or enforce a duty in such words as to make the prohibition or the duty absolute; in which case the principal is liable if the act is in fact done by his servants': *Moussell Bros Ltd v London & North-Western Rly Co* [1917] 2 KB 836 at 845. See *Seaboard Offshore Ltd v Secretary of State for Transport, The Safe Carrier* [1993] 3 All ER 25 at 30-32, [1993] 1 WLR 1025 at 1030-1032, DC, per Staughton LJ (affd [1994] 2 All ER 99, [1994] 1 WLR 541, HL). See also *Tesco Stores Ltd v Brent London Borough Council* [1993] 2 All ER 718, [1993] 1 WLR 1037, DC.

4 The governing principle was laid down in *Tesco Supermarkets Ltd v Natrass* [1972] AC 153 at 199-200, [1971] 2 All ER 127 at 155, HL, per Lord Diplock: '[the answer to] the question: what natural persons are to be treated in law as being the company for the purposes of acts done in the course of its business, including the taking of precautions and the exercise of due diligence to avoid the commission of a criminal offence, is to be found by identifying those natural persons who by the memorandum and articles of association or as a result of action taken by the directors, or by the company in general meeting pursuant to the articles, are entrusted with the exercise of the powers of the company'. Thus it is not every employee of the company, whoever lowly, whose acts will be treated as those of the company: see *Seaboard Offshore Ltd v Secretary of State for Transport, The Safe Carrier* [1993] 3 All ER 25 at 34, [1993] 1 WLR 1025 at 1035, DC, per Staughton LJ (affd [1994] 2 All ER 99, [1994] 1 WLR 541, HL).

5 See eg *B v B (mental health patient)* [1979] 3 All ER 494 at 498, [1980] 1 WLR 116 at 121, CA; *Penman v Parker* [1986] 2 All ER 862, [1986] 1 WLR 882, DC.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/D. PRINCIPLES REGARDING THE PUBLIC INTEREST/1450. Law should serve the public interest.

#### **D. PRINCIPLES REGARDING THE PUBLIC INTEREST**

### 1450. Law should serve the public interest.

It is the basic principle of legal policy<sup>1</sup> that law should serve the public interest<sup>2</sup>; so the court when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment<sup>3</sup> would give effect to the legislative intention, should presume that the legislator intended to observe this principle. It should therefore strive to avoid adopting a construction which is in any way adverse to the public interest. In pursuance of this principle, all enactments are presumed to be for the public benefit<sup>4</sup>.

Where a literal construction would seriously damage the public interest, and no deserving person would be prejudiced by a strained construction to avoid this, the court will apply such a construction<sup>5</sup>.

In pursuance of the principle that law should serve the public interest, the courts have evolved the important technique known as construction *in bonam partem* (in good faith). If a statutory benefit is given only if a specified condition is satisfied, it is presumed that Parliament intended the benefit to operate only where the required act is performed in a lawful manner<sup>6</sup>. Equally a person does not forfeit a statutory right because he or she has abstained from action that would have been illegal<sup>7</sup>. Construction *in bonam partem* applies where a disability is removed conditionally, since the removal of a disability ranks as a benefit<sup>8</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 Legal policy is laid down by the courts and, in the words of Lord Wright, 'every rule of law... which has been laid down by the courts, in that course of judicial legislation which has evolved the law of this country, has been based on considerations of public interest or policy': *Fender v St John-Mildmay*[1938] AC 1 at 38, HL.

3 As to the opposing constructions see PARA 1377 ante.

4 *The Swift* (1813) 1 Dods 320 at 329; *Richards v MacBride*(1881) 8 QBD 119 at 123-124, DC; *A-G v Hancock*[1940] 1 KB 427 at 435, [1940] 1 All ER 32 at 36; *London and North Eastern Ry Co v Berriman*[1946] AC 278 at 313, [1946] 1 All ER 255 at 270, HL; *Bombay Province v Bombay Municipal Corpn*[1947] AC 58 at 62-63, PC; *London County Territorial and Auxiliary Forces Assocn v Nichols*[1949] 1 KB 35 at 45, [1948] 2 All ER 432 at 433, CA.

5 See eg *A-G v Parsons*[1956] AC 421, [1956] 1 All ER 65, HL; *Insurance Officer v Hemmant*[1984] 2 All ER 533, [1984] 1 WLR 857, CA.

6 Co Litt s 728. See eg *Shah v Barnet London Borough Council* [1983] 2 AC 309 at 343-344, [1983] 1 All ER 226 at 235, HL, per Lord Scarman. See also *Gidlow-Jackson v Middlegate Properties Ltd*[1974] QB 361, [1974] 1 All ER 830, CA (the 'letting value' of a property, within the meaning of the Leasehold Reform Act 1967 s 4(1) (as amended), could not exceed the statutory standard rent); *Harris v Amery*(1865) LR 1 CP 148 (voting qualification based on interest in land: actual interest illegal). Cf *Hipperson v Electoral Registration Officer for the District of Newbury*[1985] QB 1060, [1985] 2 All ER 456, CA (residential qualification for the franchise did not by implication require the residence to be lawful, though it did require that it should not be in breach of a court order). See further *R v Hulme*(1870) LR 5 QB 377; *Hughes v Smallwood*(1890) 25 QBD 306 at 309; *Glamorgan County Council v Carter*[1962] 3 All ER 866 at 868, [1963] 1 WLR 1 at 5, DC; *Rous v Mitchell*[1991] 1 All ER 676 at 700-702, [1991] 1 WLR 469 at 495-497, CA, per Nourse LJ; *Killick v Roberts*[1991] 4 All ER 289, [1991] 1 WLR 1146, CA.

7 See eg *R v Hillingdon London Borough Council, ex p Wilson*(1983) Times, 14 July (applicant, who had given up housing accommodation in Australia, would have contravened immigration laws if she had not done so). See also *R v Portsmouth City Council, ex p Knight* (1983) 82 LGR 184.

8 See eg *Adlam v The Law Society*[1968] 1 All ER 17, [1968] 1 WLR 6.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/D. PRINCIPLES REGARDING THE PUBLIC INTEREST/1451. Protection of state security.

### **1451. Protection of state security.**

One aspect of the principle that law should serve the public interest<sup>1</sup> is that it should safeguard the security of the state<sup>2</sup>; so the court when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment<sup>3</sup> would give effect to the legislative intention, should presume that the legislator intended to observe this principle. It should therefore strive to avoid adopting a construction which is in any way adverse to the security of the state.

In the balancing of interpretative factors<sup>4</sup> greater weight will be given to considerations of state security the more that is generally imperilled by current conditions<sup>5</sup>.

1 See PARA 1450 ante.

2 *Liversidge v Anderson* [1942] AC 206 at 252, [1941] 3 All ER 338 at 366, HL, per Lord Macmillan.

3 As to the opposing constructions see PARA 1377 ante.

4 See PARA 1378 ante.

5 See *R v Halliday* [1917] AC 260, HL. The much-criticised decision in *Liversidge v Anderson* [1942] AC 206, [1941] 3 All ER 338, HL, might have been different if it had not been decided at the height of the 1939-45 war. Similarly the fact that *DPP v Lamb* [1941] 2 KB 89, [1941] 2 All ER 499, DC, *Buckman v Button* [1943] KB 405, [1943] 2 All ER 82, DC, and *R v Oliver* [1944] KB 68, [1943] 2 All ER 800, CCA (retrospectivity of increases in penalties for offences) were decided in war conditions may explain why they were not followed in *R v Deery* [1977] Crim LR 550 (NI CA).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/D. PRINCIPLES REGARDING THE PUBLIC INTEREST/1452. The Queen's peace.

### **1452. The Queen's peace.**

One aspect of the principle that law should serve the public interest<sup>1</sup> is that it should safeguard the Queen's peace (more briefly known as 'the peace') and public order generally<sup>2</sup>; so the court when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment<sup>3</sup> would give effect to the legislative intention, should presume that the legislator intended to observe this principle<sup>4</sup>. It should therefore strive to avoid adopting a construction which may encourage breach of the peace or other public disorder<sup>5</sup>.

1 See PARA 1450 ante.

2 The concept of the Queen's peace is central to legal policy. Civilised living demands tranquil social conditions; and that disputes should be settled peaceably. Crown superintendence and protection of the peace is entrusted to the Home Secretary as an aspect of the prerogative: *Harrison v Bush* (1855) 5 E & B 344 at 353 per Lord Campbell CJ; *R v Secretary of State for the Home Department, ex p Northumbria Police Authority* [1989] QB 26, [1988] 1 All ER 556, CA. Those who enforce statutes are required to uphold the peace, and constables in particular swear or affirm that they will do so: see PARA 1328 ante.

3 As to the opposing constructions see PARA 1377 ante.

4 A person is guilty of an offence 'who without lawful authority or reasonable excuse... has with him in any public place an offensive weapon': see the Prevention of Crime Act 1953 s 1(1) (as amended). In pursuance of the policy of upholding the peace, the courts have construed 'reasonable excuse' narrowly and 'offensive weapon' widely. It has not been left to juries to decide whether an excuse is reasonable, and the adjective 'offensive' has been extended to cover defensive use: see TMS Tosswill, 'Defensive Weapons' (1981) 131 NLJ 1024.

5 See *Cooper v Wandsworth Board of Works* (1863) 14 CBNS 180 at 188-189 per Erle CJ ('I can conceive a great many advantages which might arise in the way of public order... by the restriction which we put upon them, that they should hear the party before they inflict upon him such a heavy loss').

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/D. PRINCIPLES REGARDING THE PUBLIC INTEREST/1453. Illegality.

### 1453. Illegality.

Unless the contrary intention appears, an enactment by implication imports the principle of legal policy<sup>1</sup> embodied in the maxim *allegans suam turpitudinem non est audiendus* (a person alleging his own wrongdoing is not to be heard)<sup>2</sup>. Contravention of a statutory requirement is an unlawful act<sup>3</sup>. This illegality taints the act, precluding the doer from relying on the act to found an action<sup>4</sup> or establish a defence<sup>5</sup>. It makes it possible for tax to be levied on unlawful gains, since the taxpayer cannot resist an assessment by setting up his own wrong<sup>6</sup>. However a person will not be precluded from relying on his or her illegality if to do so would deprive innocent third parties of legal rights<sup>7</sup>. The effect of illegality is not substantive but procedural<sup>8</sup>.

Unless the contrary intention appears, an enactment by implication also imports the principle of legal policy embodied in the maxim *nullus commodum capere potest de injuria sua propria* (no one should be allowed to profit from his own wrong)<sup>9</sup>. The most obvious application of this principle against wrongful self-benefit relates to murder and other unlawful homicide<sup>10</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 See *Shah v Barnet London Borough Council* [1983] 2 AC 309 at 344, [1983] 1 All ER 226 at 235, HL, per Lord Scarman. A related maxim is *ex turpi causa non oritur actio* (an action does not arise from a wrongful cause): Cowp 343; see *Thackwell v Barclays Bank plc* [1986] 1 All ER 676; *Phoenix General Insurance Co of Greece SA v Administratia Asigurarilor de Stat, Phoenix General Insurance Co of Greece SA v Halvanon Insurance Co Ltd* [1988] QB 216, [1987] 2 All ER 152, CA; cf *Kirkham v Chief Constable of the Greater Manchester Police* [1990] 2 QB 283, [1990] 3 All ER 246, CA. For the history of this maxim see *Pitts v Hunt* [1991] 1 QB 24, [1990] 3 All ER 344, CA.

3 As to the duty to obey legislation see PARA 1322 et seq ante.

4 *Cope v Rowlands* (1836) 2 M & W 149 at 157-159 per Parke B; *Elliott v Richardson* (1870) LR 5 CP 744; *Mellis v Shirley Local Board* (1885) 16 QBD 446; *Equitable Life Assurance Society of United States v Reed* [1914] AC 587 at 595, PC; *Farmers' Mart Ltd v Milne* [1915] AC 106; *Cornelius v Phillips* [1918] AC 199; *Re Johns* [1928] 1 Ch 737; *Marles v Philip Trant & Sons Ltd (No 2)* [1954] 1 QB 29 at 38, [1953] 1 All ER 651 at 658, CA, per Denning LJ; *Goordin v Secretary of State for the Home Department* (1981) Times, 10 August; *Phoenix General Insurance Co of Greece SA v Administratia Asigurarilor de Stat, Phoenix General Insurance Co of Greece SA v Halvanon Insurance Co Ltd* [1988] QB 216, [1987] 2 All ER 152, CA.

5 *Montefiori v Montefiori* (1762) 1 Wm BI 364 per Lord Mansfield ('no man shall set up his own iniquity as a defence, any more than as a cause of action'). See also *Holman v Johnson* (1775) 1 Cowp 341.

6 See *Minister of Finance v Smith* [1927] AC 193 at 197, PC; *Mann v Nash* [1932] 1 KB 752; *Southern (Inspector of Taxes) v AB Ltd* [1933] 1 KB 713; *Collins v Mulvey* [1956] IR 233.

7 See eg *Healey v Healey* [1984] Fam 111, [1984] 3 All ER 1040.

8 *Tinsley v Milligan* [1994] 1 AC 340 at 374, [1993] 3 All ER 65 at 80, HL, per Lord Browne-Wilkinson; and see *Tribe v Tribe* [1995] 4 All ER 236, CA.

9 Co Litt 148b; *Buswell v Goodwin* [1971] 1 All ER 418 at 421, [1971] 1 WLR 92 at 96 per Widgery LJ ('The proposition that a man will not be allowed to take advantage of his own wrong is no doubt a very salutary one and one which the court would wish to indorse...'). See also *R v Secretary of State for the Home Department, ex p Puttick* [1981] QB 767, [1981] 1 All ER 776, DC; *Peabody Donation Fund (Governors) v Sir Lindsay Parkinson & Co Ltd* [1985] AC 210, [1983] 3 All ER 417, CA (affd [1985] AC 210, [1984] 3 All ER 529, HL); *Gardner v Moore* [1984] AC 548, [1984] 1 All ER 1100, HL; *R v Exeter City Council, ex p Gliddon* [1985] 1 All ER 493; *Re Royse (decd)* [1985] Ch 22, [1984] 3 All ER 339, CA; *Re K (decd)* [1986] Ch 180, [1985] 2 All ER 833, CA; *Balco Transport Services Ltd v Secretary of State for the Environment* [1985] 3 All ER 689, [1986] 1 WLR 88, CA; *F C Shepherd & Co Ltd v Jerrom* [1987] QB 301 at 325, [1986] 3 All ER 589 at 601, CA; *A-G v Guardian Newspapers Ltd (No 2)* [1990] 1 AC 109, [1988] 3 All ER 545, HL; *Owens Bank Ltd v Bracco* [1992] 2 AC 443, [1992] 2 All ER 193, HL. The effect is usually that the literal meaning of the enactment is departed from where it would result in wrongful self-benefit.

10 In this form it is described in the Forfeiture Act 1982 s 1 as 'the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing'. On the application of the principle in this area see *R v National Insurance Comr, ex p Connor* [1981] QB 758 at 766, [1981] 1 All ER 769 at 774, DC. See also *Cleaver v Mutual Reserve Fund Life Assocn* [1892] 1 QB 147 at 156; *Re Crippen's Estate* [1911] P 108 at 112; *Re Hall's Estate* [1914] P 1; *Tinline v White Cross Insurance Assocn Ltd* [1921] 3 KB 327; *James v British General Insurance Co Ltd* [1927] 2 KB 311; *Re Sigsworth* [1935] Ch 89; *Beresford v Royal Insurance Ltd* [1938] AC 586 at 596-599, HL; *Re Callaway, Callaway v Treasury Solicitor* [1956] Ch 559, [1956] 2 All ER 451; *Re Peacock, Midland Bank Executor and Trustee Co Ltd v Peacock* [1957] Ch 310, [1957] 2 All ER 98; *St John Shipping Corp v Joseph Rank Ltd* [1957] 1 QB 267, [1956] 3 All ER 683; *Re Giles decd, Giles v Giles* [1972] Ch 544, [1971] 3 All ER 1141; *Gray v Barr* [1971] 2 QB 554, [1971] 2 All ER 949, CA; *Re K (decd)* [1986] Ch 180, [1985] 2 All ER 833, CA.

## UPDATE

### 1453 Illegality

NOTE 9--Cf *R (on the application of Philcox) v Epping Forest DC* [2002] PLCR 32, CA (application for judicial review of grant of certificate of lawfulness of existing use under Town and Country Planning Act 1990 s 191, on the ground that the use constituted an offence under the Environmental Protection Act 1990, refused). See also *Jones v Congregational and General Insurance plc* [2003] EWHC 1027 (QB), [2003] All ER (D) 322 (Jun) (legally aided claimants who set fire to their building and claimed against defendant insurer not entitled to statutory protection against costs order).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/D. PRINCIPLES REGARDING THE PUBLIC INTEREST/1454. Protection of morality.

### 1454. Protection of morality.

Unless the contrary intention appears, an enactment by implication imports the principle of legal policy<sup>1</sup> whereby the law protects and advances morality<sup>2</sup>. Society's concepts of morality change, and the law keeps in step with such changes<sup>3</sup>; but the fact that Parliament has chosen to decriminalise certain conduct does not mean that the law will necessarily cease to treat it as immoral<sup>4</sup>.

1 As to legal policy see PARAS 1431-1432 ante.



2 The morality here indicated is primarily sexual morality. Viscount Simonds said it is the supreme and fundamental purpose of the law 'to conserve not only the safety and order but also the moral welfare of the State': *Shaw v DPP* [1962] AC 220 at 267, [1961] 2 All ER 446 at 452, HL. For examples of the effect of this principle of legal policy on statutory interpretation see *R v Chapman* [1959] 1 QB 100, [1958] 3 All ER 143, CCA (sexual intercourse with girl held to fall within the statutory description 'unlawful' even though she was over marriageable age and consented); *R v Drury* [1975] Crim LR 655, CA (householder held to have 'the custody or care' of a sexually-assaulted 14-year old girl merely because she was a casual baby-sitter at his home).

3 'Even if accepted public standards may to some extent vary from generation to generation, current standards are in the keeping of juries, who can be trusted to maintain the corporate good sense of the community and to discern attacks upon values that must be preserved': *Shaw v DPP* [1962] AC 220 at 292, [1961] 2 All ER 446 at 467, HL, per Lord Morris. See also *C v C* [1980] Fam 23 at 26-27, [1979] 1 All ER 556 at 559, CA, per Ormrod LJ (change in meaning of 'depravity'); *McMonagle v Westminster City Council* [1990] 2 AC 716 at 725, [1990] 1 All ER 993 at 996, HL, per Lord Bridge (reference to 'the sexual revolution').

4 See eg *Knüller (Publishing, Printing and Promotions) Ltd v DPP* [1973] AC 435, [1972] 2 All ER 898, HL (homosexual practices); *R v City of London Coroner, ex p Barber* [1975] Crim LR 515 (suicide); but cf *Kirkham v Chief Constable of the Greater Manchester Police* [1989] 3 All ER 882 (affd [1990] 2 QB 283, [1990] 3 All ER 246, CA), where *R v City of London Coroner, ex p Barber* supra was not cited.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/E. PRINCIPLES REGARDING HUMAN RIGHTS AND CITIZEN'S RIGHTS/1455. Human rights and citizen's rights.

## **E. PRINCIPLES REGARDING HUMAN RIGHTS AND CITIZEN'S RIGHTS**

### **1455. Human rights and citizen's rights.**

It is a principle of legal policy<sup>1</sup> that law should uphold human rights and the rights of persons as citizens<sup>2</sup>; so the court when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment<sup>3</sup> would give effect to the legislative intention, should presume that the legislator intended to observe this principle.

1 As to legal policy see PARAS 1431-1432 ante.

2 The common law tends not to produce general statements of this kind but, as will be seen from the treatment of particular aspects in PARA 1456 et seq post, the decisions of the English courts, taken collectively, justify it. Indeed they were to a large extent the source of the provisions now incorporated in the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969), more familiarly known as the European Convention on Human Rights. Lord Donaldson MR said of this: '... you have to look long and hard before you can detect any difference between the English common law and the principles set out in the convention' (*R v Secretary of State for the Home Department, ex p Brind* [1991] 1 AC 696 at 717, [1990] 1 All ER 469 at 477, CA; see also *Derbyshire County Council v Times Newspapers Ltd* [1993] AC 534, [1993] 1 All ER 1011, HL). The convention entered into force on 3 September 1953. The machinery for its enforcement consists of the European Commission of Human Rights and the European Court of Human Rights, both of which operate at Strasbourg. The United Kingdom has ratified the convention and accepted the right of individual petition to the commission, but has not made the convention part of its municipal law. In accordance with principle (see PARA 1439 ante) it is presumed, unless the contrary intention appears, that when legislating Parliament intends to conform to the requirements of the convention: see *A-G v BBC* [1981] AC 303 at 354, [1980] 3 All ER 161 at 178, HL, per Lord Scarman ('If the issue [of statutory interpretation] should ultimately be, as I think in this case it is, a question of legal policy, we must have regard to the country's international obligation to observe the [European] Convention as interpreted by the [European] Court of Human Rights'); see also *Pan-American World Airways Inc v Department of Trade* [1976] 1 Lloyd's Rep 257 at 261, CA, per Scarman LJ; *R v Secretary of State for the Home Department, ex p Fernandes* (1980) Times, 21 November, CA; *R v Secretary of State for the Home Department, ex p Kirkwood* [1984] 2 All ER 390, [1984] 1 WLR 913; *R v Secretary of State for the Home Department, ex p Wynne* [1992] QB 406, [1992] 2 All ER 301, CA (affd sub nom *Wynne v Secretary of State for the Home Department* [1993] 1 All ER 574; sub nom *R v Secretary of State for the Home Department, ex p Wynne* [1993] 1 WLR 115, HL) at 427; *A-G v Associated Newspapers Ltd* [1994] 2 AC

238, [1994] 1 All ER 556, HL. The rights of persons as citizens equate more or less closely to what are nowadays commonly referred to as human rights, but the former term explicitly identifies a state connection which is not always present in the case of human rights generally (compare eg the right to vote, which may be termed a citizen's right, with the right to life). As to the European Convention on Human Rights see further CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 As to the opposing constructions see PARA 1377 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/E. PRINCIPLES REGARDING HUMAN RIGHTS AND CITIZEN'S RIGHTS/1456. Principle against doubtful penalisation.

### **1456. Principle against doubtful penalisation.**

It is a principle of legal policy<sup>1</sup> that a person should not be penalised except under clear law, or in other words should not be put in peril upon an ambiguity<sup>2</sup>; so the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment<sup>3</sup> would give effect to the legislative intention, should presume that the legislator intended to observe this principle. It should therefore strive to avoid adopting a construction which subjects a person to any detriment where the legislator's intention to do so is doubtful, or penalises him in a way which was not made clear by the legislation in question<sup>4</sup>.

The principle against doubtful penalisation raises the following points:

- (1) the meaning of 'penal'<sup>5</sup>;
- (2) the difference between strict and liberal construction<sup>6</sup>;
- (3) the question of compensation<sup>7</sup>;
- (4) the question whether value is provided<sup>8</sup>;
- (5) the relevant standard of proof<sup>9</sup>; and
- (6) the need to consider countervailing factors<sup>10</sup>.

1 As to legal policy see PARAS 1431-1432 ante. For a general discussion of legal policy in its application to human rights and citizen's rights see PARA 1455 ante.

2 This may be called the principle against doubtful penalisation. Whenever it can be argued that an enactment has a meaning requiring infliction of a detriment of any kind, the principle comes into play. If the detriment is minor, the principle will carry little weight. If the detriment is severe, the effect of the principle will be correspondingly powerful. As to the weighing and balancing of interpretative factors see PARA 1378 ante; and see also the text and notes 3-10 infra. In relation to penalisation through retrospectivity, it has been said that this may be a matter of degree; 'the greater the unfairness, the more it is to be expected that Parliament will make it clear if that is intended': *Secretary of State for Social Security v Tunncliffe* [1991] 2 All ER 712 at 724, CA, per Staughton LJ; overruled on grounds not affecting this dictum in *Plewa v Chief Adjudication Officer* [1995] 1 AC 249, [1994] 3 All ER 323, HL. For the application of the principle against doubtful penalisation to retrospectivity see PARA 1286 ante. 'Those who contend that the penalty may be inflicted, must show that the words of the Act distinctly enact that it shall be incurred under the present circumstances. They must fail, if the words are merely equally capable of a construction that would, and one that would not, inflict the penalty': *Dickenson v Fletcher* (1873) LR 9 CP 1 at 7 per Brett J. 'If the language of the statute is equivocal and there are two reasonable meanings of that language, the interpretation which will avoid the penalty is to be adopted': *Re HPC Productions Ltd* [1962] Ch 466 at 485, [1962] 1 All ER 37 at 49.

3 As to the opposing constructions see PARA 1377 ante.

4 *Stephenson v Higginson* (1851) 3 HL Cas 638 at 686; *Taylor v Oram* (1862) 1 H & C 370 at 377; *Dyke v Elliott, The Gauntlet* (1872) LR 4 PC 184 at 191; *Dickenson v Fletcher* (1873) LR 9 CP 1 at 8; *Smith v Northleach Rural Council* [1902] 1 Ch 197 at 202; *Myers v Bradford Corp* (1913) 110 LT 254; *Re Vexatious Actions Act 1896, Re Boaler* [1915] 1 KB 21, CA; *Re HPC Productions Ltd* [1962] Ch 466 at 485, [1962] 1 All ER 37 at 49 per

Plowman J. See also *Rosenbaum v Burgoyne* [1965] AC 430 at 440, [1964] 2 All ER 988 at 990, HL, per Lord Reid; *R v Cuthbertson* [1981] AC 470 at 481, [1980] 2 All ER 401 at 404, HL, per Lord Diplock.

5 The principle against doubtful penalisation is most often expressed in the form 'penal enactments must be strictly construed'. For this purpose the term 'penal' has been treated as a term of art, and given various meanings depending on the context: see *R v Vine* (1875) LR 10 QB 195; *Mellor v Denham* (1880) 5 QBD 467, CA; *R v Whitchurch* (1881) 7 QBD 534, CA; *R v Paget* (1881) 8 QBD 151 at 157, DC, per Field J; *Reeve v Gibson* [1891] 1 QB 652, CA; *Ex p Schofield* [1891] 2 QBD 428; *Saunders v Wiel* [1892] 2 QB 321, CA; *Huntington v Attrill* [1893] AC 150, PC; *Derby Corp v Derbyshire County Council* [1897] AC 550 at 552, HL; *Thomson v Lord Clanmorris* [1900] 1 Ch 718 at 725, CA; and see Craies, *Statute Law* (7th Edn, 1971) p 525 et seq. However it is now recognised that any law that inflicts hardship or deprivation of any kind is in essence penal. There are degrees of penalisation, but the concept of detriment inflicted through the state's coercive power pervades them all: see PARA 1240 ante.

6 See PARA 1379 ante.

7 If an enactment, though penal from one aspect, provides compensation for the detriment, then this obviously lessens the need for a strict construction of the enactment. The common law frowns on deprivation without compensation. 'It is a proper rule of construction not to construe an Act of Parliament as interfering with or injuring persons' rights without compensation, unless one is obliged to so construe it': *A-G v Horner* (1884) 14 QBD 245 at 257, CA, per Brett MR; approved in *Consett Iron Co Ltd v Clavering Trustees* [1935] 2 KB 42 at 58, CA, and *Bond v Nottingham Corp* [1940] Ch 429 at 435, [1940] 2 All ER 12 at 15-16, CA. See also *Wells v London, Tilbury and Southend Rly* (1877) 5 ChD 126 at 130; *Central Control Board (Liquor Traffic) v Cannon Brewery Co Ltd* [1919] AC 744 at 753, HL; *Re De Keyser's Royal Hotel Ltd, De Keyser's Royal Hotel Ltd v R* [1919] 2 Ch 197, CA (affd sub nom *A-G v De Keyser's Royal Hotel* [1920] AC 508, HL; *Bournemouth-Swanage Motor Road and Ferry Co v Harvey & Sons* [1929] 1 Ch 686 at 697, CA; *Marshall v Blackpool Corp* [1933] 1 KB 688 at 693-694, DC; *Langham v City of London Corp* [1949] 1 KB 208 at 212, [1948] 2 All ER 1018 at 1020, CA; *Minister of Health v Stafford Corp* [1952] Ch 730 at 743, [1952] 2 All ER 386 at 393, CA; *Bankes v Salisbury Diocesan Council of Education Inc* [1960] Ch 631 at 651, 655, [1960] 2 All ER 372 at 380, 383; *Hall & Co Ltd v Shoreham-by-Sea UDC* [1964] 1 All ER 1, [1964] 1 WLR 240, CA; *Minister of Housing and Local Government v Hartnell* [1965] AC 1134, [1965] 1 All ER 490, HL; *Westminster Bank Ltd v Minister of Housing and Local Government* [1971] AC 508 at 529, [1970] 1 All ER 734 at 738-739, HL, per Lord Reid, who also stated that the relevant intention may appear not only from express words but also by irresistible inference; *Limb & Co (Stevedores) (a firm) v British Transport Docks Board* [1971] 1 All ER 828 at 837-838, [1971] 1 WLR 311 at 322 per Baker J; *R v Hillingdon London Borough Council, ex p Royco Homes Ltd* [1974] QB 720, [1974] 2 All ER 643, DC. For examples of deprivation without compensation see *Westminster Bank Ltd v Minister of Housing and Local Government* supra; *Limb & Co (Stevedores) (a firm) v British Transport Docks Board* supra; *Kingston-upon-Thames Royal London Borough Council v Secretary of State for the Environment* [1974] 1 All ER 193, [1973] 1 WLR 1549, DC; *Sheffield City Council v Yorkshire Water Services Ltd* [1991] 2 All ER 280 at 290, [1991] 1 WLR 58 at 69. See further COMPULSORY ACQUISITION OF LAND; CONSTITUTIONAL LAW AND HUMAN RIGHTS. Where a statutory procedure exists for taking away rights with compensation, the court will resist the argument that some other procedure is available for doing the same thing without compensation: *Minister of Housing and Local Government v Hartnell* supra; *Hall & Co Ltd v Shoreham-by-Sea UDC* supra.

8 As with statutory tolls and the like where the payment made is in return for services rendered: *Pryce v Monmouthshire Canal and Rly Cos* (1879) 4 App Cas 197 at 202, HL. Cf *Kingston-upon-Hull Dock Co v La Marche* (1828) 8 B & C 42; *South Staffordshire Waterworks Co v Barrow* (1897) 61 JP 661, CA.

9 Where an enactment would inflict a serious detriment on a person if certain facts were established then, even though the case is not a criminal cause or matter, the criminal standard of proof will be required to establish those facts and their existence will not be taken to be proved merely on a balance of probabilities. Proof must be beyond reasonable doubt, so that anyone testing it would feel sure: see eg *R v Milk Marketing Board, ex p Austin* (1983) Times, 21 March per Forbes J (when a man's livelihood is at stake the standard of proof should not be lower than in criminal proceedings).

10 Judges often find it necessary to give great weight to counter-principles such as the need to protect the public against criminals. On the other hand, additional factors may reinforce the effect of the principle against doubtful penalisation: see eg *R v Bloxham* [1983] 1 AC 109 at 114, [1982] 1 All ER 582 at 585, HL, per Lord Bridge.

PRINCIPLES REGARDING HUMAN RIGHTS AND CITIZEN'S RIGHTS/1457. Detriment to human life or health.

### 1457. Detriment to human life or health.

It is a principle of legal policy<sup>1</sup> that the law should uphold human life and health<sup>2</sup>, and therefore that, as an aspect of the principle against doubtful penalisation<sup>3</sup>, the life of a person should not be ended, or the health of a person impaired or endangered, except under clear authority of law<sup>4</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 Under the European Convention on Human Rights, everyone's right to life is required to be protected by law, and no one is to be deprived of life intentionally save in the execution of a court sentence following conviction for a crime for which the law imposes the death penalty: see art 2. Exceptions cover self-defence, lawful arrest, and action taken to quell riot or insurrection: see art 2. Article 3 follows the Bill of Rights (1689) in prohibiting torture, and 'inhuman or degrading treatment or punishment'. As to the European Convention on Human Rights see further PARA 1455 ante; and see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 See PARA 1456 ante.

4 Whenever a particular construction of an enactment may endanger human life, or lead to detriment to a person's health or personal safety, the principle against doubtful penalisation comes into play. It is analogous to the principle, applied in *Johnstone v Bloomsbury Health Authority* [1992] QB 333, [1991] 2 All ER 293, CA (following *Ottoman Bank v Chakarian* [1930] AC 277, PC), that it is unlawful for an employer to order his employee to do an act which, even though apparently within the contract of employment, endangers his life or health. In criminal law the death penalty was the most obvious example, though corporal punishment also came into this category. See eg *R v Eastbourne Inhabitants* (1803) 4 East 103; *W v W* (1963) [1964] P 67 at 70-71; sub nom *W v W (No 4)* [1963] 2 All ER 386 at 387-388 per Cairns J (on appeal [1964] P 67, [1963] 2 All ER 841, CA); *Starr v National Coal Board* [1977] 1 All ER 243 at 249, [1977] 1 WLR 63 at 70-71, CA, per Scarman LJ; *R v Dunbar* [1982] 1 All ER 188 at 191, [1981] 1 WLR 1536 at 1540, CA, per Lord Lane CJ; *Aspinall v Sterling Mansell Ltd* [1981] 3 All ER 866; *Prescott v Bulldog Tools Ltd* [1981] 3 All ER 869; *Bugdaycay v Secretary of State for the Home Department* [1987] AC 514, [1987] 1 All ER 940, HL; *R v Registrar General, ex p Smith* [1990] 2 QB 253, [1990] 2 All ER 170, DC (affd [1991] 2 QB 393, [1991] 2 All ER 88, CA); *Re T (adult: refusal of medical treatment)* [1993] Fam 95 at 115, [1992] 4 All ER 649 at 663, CA, per Lord Donaldson MR.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/E. PRINCIPLES REGARDING HUMAN RIGHTS AND CITIZEN'S RIGHTS/1458. Restraint of the person.

### 1458. Restraint of the person.

It is a principle of legal policy<sup>1</sup> that the law should uphold personal liberty<sup>2</sup>, and therefore that, as an aspect of the principle against doubtful penalisation<sup>3</sup>, the physical liberty of a person should not be interfered with except under clear authority of law<sup>4</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 Under the European Convention on Human Rights, no one is to be held in slavery or servitude, or be required to perform forced or compulsory labour: see art 4. Exceptions cover lawful imprisonment, military service, work to meet an emergency threatening the life or well-being of the community, and 'normal civic obligations': see art 4. Everyone has the right to liberty and security of person, and that no one shall be deprived of his liberty except in one of a number of specified cases (ie lawful imprisonment, care of minors, and detention of the mentally ill, alcoholics, drug addicts, vagrants, and persons with infectious diseases): see art 5. Imprisonment merely on the ground of inability to fulfil a contractual obligation is forbidden; and, subject to obvious exceptions, everyone lawfully within the territory of the state is to have the right to liberty of

movement (including freedom to choose his residence), and freedom to leave the state: see Protocol 4. As to the European Convention on Human Rights see further PARA 1455 ante; and see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 See PARA 1456 ante.

4 Freedom from unwarranted restraint of the person has been a keystone of English law at least since Magna Carta, which states 'No free man shall be seised or imprisoned... nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land': text of 1215, translated by GRC Davis (*Magna Carta*, British Library 1985). 'The duty of the courts is to uphold this classic statement of the rule of law': *R v Secretary of State for the Home Department, ex p Muboyayi* [1992] QB 244 at 254, [1991] 4 All ER 72 at 78, CA, per Lord Donaldson MR. See also *R v Halliday* [1917] AC 260 at 274, HL; *R v Cannon Row Police Station Inspector, ex p Brady* (1921) 126 LT 9 at 13, CA; *Grove v Eastern Gas Board* [1952] 1 KB 77 at 82, [1951] 2 All ER 1051 at 1053, CA, per Somervell LJ; *R v Governor of Pentonville Prison, ex p Azam* [1974] AC 18 at 31, [1973] 2 All ER 741 at 751, CA, per Lord Denning (on appeal [1974] AC 18, [1973] 2 All ER 765, HL); *Collins v Wilcock* [1984] 3 All ER 374 at 377-378, [1984] 1 WLR 1172 at 1176-1177, DC, per Goff LJ; *R v Hallstrom, ex p W (No 2)*, *R v Gardner, ex p L* [1986] QB 1090, [1986] 2 All ER 306; *Bugdaycay v Secretary of State for the Home Department* [1987] AC 514 at 537, [1987] 1 All ER 940 at 956, HL, per Lord Templeman; *Brookes v DPP of Jamaica* [1994] AC 568 at 582, [1994] 2 All ER 231 at 241, PC, per Lord Woolf.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/E. PRINCIPLES REGARDING HUMAN RIGHTS AND CITIZEN'S RIGHTS/1459. Interference with family rights.

### **1459. Interference with family rights.**

It is a principle of legal policy<sup>1</sup> that the law should uphold the family<sup>2</sup> and therefore that, as an aspect of the principle against doubtful penalisation<sup>3</sup>, the family arrangements of a person should not be interfered with, nor his relationships with family members impaired, except under clear authority of law<sup>4</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 Under the European Convention on Human Rights, everyone has the right to respect for his family life and his home, with exceptions for national security, public safety, economic wellbeing of the state, prevention of crime or disorder, protection of health or morals, and the freedom of others: see art 8. Men and women of marriageable age have the right to marry and to found a family: see art 12. No person is to be denied the right to education, and the state must respect the right of parents to ensure that education is in conformity with their own 'religious and philosophical convictions': see Protocol 1. As to the European Convention on Human Rights see further PARA 1455 ante; and see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 See PARA 1456 ante.

4 The courts lean in favour of the transmission of an intestate's estate to members of his family, rather than that it should pass to the state as bona vacantia: see *Re Lockwood, Atherton v Brooke* [1958] Ch 231, [1957] 3 All ER 520. It is the policy of the law to uphold, rather than defeat, the validity of a marriage (see *Lawrence v Lawrence* [1985] Fam 106 at 133-134, [1985] 2 All ER 733 at 745-746, CA) and to safeguard the foundations of family life (see *Re Agar-Ellis, Agar-Ellis v Lascelles* (1883) 24 ChD 317 at 336). The law has always concerned itself with the protection of the home: see PARA 1460 post. An interpretation that would make a person homeless is therefore adopted with reluctance: see *Annicola Investments Ltd v Minister of Housing and Local Government* [1968] 1 QB 631 at 644, [1965] 3 All ER 850 at 856-857. As to the enactments relating to child care see *Lewisham London Borough Council v Lewisham Juvenile Court Justices* [1980] AC 273 at 307, [1979] 2 All ER 297 at 319, HL, per Lord Scarman ('The policy of the legislation emerges clearly from a study of its provisions. The encouragement and support of family life are basic. The local authority is given duties and powers primarily to help, not to supplant, parents. A child is not to be removed from his home or family against the will of his parent save by the order of a court, where the parent will have the opportunity to be heard before the order is made. Respect for parental rights and duties is, however, balanced against the need to protect children from neglect, ill-treatment, abandonment, and danger; for the welfare of the child is paramount'). The

legislation to which he was referring has now been largely replaced by the Children Act 1989, which is based on similar principles. See generally CHILDREN AND YOUNG PERSONS.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/E. PRINCIPLES REGARDING HUMAN RIGHTS AND CITIZEN'S RIGHTS/1460. Infringement of domestic sanctuary.

#### **1460. Infringement of domestic sanctuary.**

Unless the contrary intention appears, an enactment by implication imports the principle of the maxim *domus sua cuique est tutissimum refugium* (a person's home is his castle)<sup>1</sup>.

1 This principle is an aspect of that described in PARA 1459 ante. The policy of the law has always upheld this principle of domestic sanctuary. Thus Lord Atkin said that promises between husband and wife are not visited with legal sanctions because the consideration for them 'is that natural love and affection which counts for so little in these cold courts' and they are made at the domestic hearth. He added: 'each house is a domain into which the King's writ does not seek to run, and to which his officers do not seek to be admitted': *Balfour v Balfour* [1919] 2 KB 571 at 579, CA. Although Parliament has often departed from the principle in particular instances, for what seemed to it compelling reasons, the courts assume prima facie that such is not its intention: *Morris v Beardmore* [1981] AC 446 at 463-465, [1980] 2 All ER 753 at 763-764, HL, per Lord Scarman. See also *Davis v Johnson* [1979] AC 264 at 342-343, [1978] 1 All ER 1132 at 1151-1152, HL, per Lord Salmon.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/E. PRINCIPLES REGARDING HUMAN RIGHTS AND CITIZEN'S RIGHTS/1461. Impairment of religious freedom.

#### **1461. Impairment of religious freedom.**

It is a principle of legal policy<sup>1</sup> that the law should uphold religious freedom<sup>2</sup>, and therefore that, as an aspect of the principle against doubtful penalisation<sup>3</sup>, the religious freedom of a person should not be interfered with, except under clear authority of law<sup>4</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 Under the European Convention on Human Rights, within obvious limitations, everyone has the right to freedom of thought, conscience and religion, including freedom to change one's religion or belief, and freedom (either alone or in community with others, and either in public or private) to manifest one's religion or belief in worship, teaching, practice and observance: see art 9; and see also art 2. By necessary implication art 9 'imposes a duty on all of us to refrain from insulting or outraging the religious feelings of others': *R v Lemon* [1979] AC 617 at 665, [1979] 1 All ER 898 at 927, HL, per Lord Scarman. As to the European Convention on Human Rights see further PARA 1455 ante; and see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 See PARA 1456 ante.

4 The law of the United Kingdom is still predisposed to the Christian religion, particularly that form of it which is by law established, ie Anglicanism. However Parliament has discarded most of the former laws, such as the Corporation Act 1661 and the Test Act 1672, which caused positive discrimination against persons of other faiths or none. The law now treats as 'mere rhetoric' Hale CJ's statement in *R v Taylor* (1676) 1 Vent 293 that Christianity is 'parcel of the laws of England': see *Bowman v Secular Society Ltd* [1917] AC 406 at 464, HL. Yet the ancient offence of blasphemous libel was in 1979 confirmed as a safeguard solely of Christian beliefs: *R v*

*Lemon* [1979] AC 617, [1979] 1 All ER 898, HL; applied in *R v Chief Metropolitan Stipendiary Magistrate, ex p Choudhury* [1991] 1 QB 429, [1991] 1 All ER 306, DC.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/E. PRINCIPLES REGARDING HUMAN RIGHTS AND CITIZEN'S RIGHTS/1462. Interference with free assembly and association.

### **1462. Interference with free assembly and association.**

It is a principle of legal policy<sup>1</sup> that the law should uphold the freedom of a person to assemble and associate freely with others<sup>2</sup>, and therefore that, as an aspect of the principle against doubtful penalisation<sup>3</sup>, the freedom of assembly and association of a person should not be interfered with, except under clear authority of law<sup>4</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 Under the European Convention on Human Rights, everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests: see art 11. There are exceptions for members of the armed forces, police and state administration, and the other usual qualifications: see art 11. As to the European Convention on Human Rights see further PARA 1455 ante; and see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 See PARA 1456 ante.

4 Freedom of assembly and association is respected by constitutional principles laid down at common law: see eg *Beatty v Gillbanks* (1882) 9 QBD 308, DC (local Salvation Army leaders were convicted of unlawful assembly for organising revival meetings and marches which would have been entirely peaceful if a hostile group had not sought to break them up by force; the conviction was overturned on appeal, Field J saying 'the finding of the justices amounts to this, that a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act. There is no authority for such a proposition': *Beatty v Gillbanks* supra at 313). See also *R v Coventry Airport, ex p Phoenix Aviation*, *R v Dover Harbour Board, ex p Peter Gilder & Sons*, *R v Associated British Ports, ex p Plymouth City Council* (1995) Times, 17 April, DC (airport, harbour and dock authorities had no general discretion under their respective statutory régimes to distinguish between different lawful trades; and even if they had, they could not properly exercise it to ban the livestock trade on grounds that it was generating unlawful disruption). As to the restrictions on freedom of assembly contained in the Public Order Act 1986 see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 578 et seq.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/E. PRINCIPLES REGARDING HUMAN RIGHTS AND CITIZEN'S RIGHTS/1463. Hindering free speech.

### **1463. Hindering free speech.**

It is a principle of legal policy<sup>1</sup> that the law should uphold a person's freedom of speech<sup>2</sup>, and therefore that, as an aspect of the principle against doubtful penalisation<sup>3</sup>, the freedom of speech of a person should not be interfered with, except under clear authority of law<sup>4</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 Under the European Convention on Human Rights, everyone has the right to freedom of expression, including freedom to hold opinions and receive and impart information and ideas without interference by public authority, and regardless of frontiers: see art 10. Licensing of broadcasting and cinemas is allowed, but not licensing of the press; and other restrictions such as 'are necessary in a democratic society' are allowed: see art 10. Freedom of expression under the convention does not, however, mean 'freedom to express yourself on 27 MHz': *R v Goldstein* [1982] 3 All ER 53 at 61, [1982] 1 WLR 804 at 814, CA, per Lord Lane CJ; on appeal [1983] 1 All ER 434, [1983] 1 WLR 151, HL (a case concerning citizens' band radios). The European Convention on Human Rights permits restrictions on the reporting of criminal trials: see art 6. As to the European Convention on Human Rights see PARA 1455 ante; and see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 See PARA 1456 ante.

4 'The liberty of the press consists in printing without any previous licence, subject to the consequences of law': *R v Dean of St Asaph* (1784) 3 Term Rep 428n per Lord Mansfield; see also *R v Cobbett* (1804) 29 State Tr 1. Scarman LJ referred to 'the law's basic concern to protect freedom of speech and individual liberty': *Re F (a minor) (publication of information)* [1977] Fam 58 at 99, [1977] 1 All ER 114 at 131, CA (approved in *A-G v Leveller Magazine Ltd* [1979] AC 440 at 465, [1979] 1 All ER 745 at 761, HL, per Lord Edmund-Davies). See also *Re X (A Minor)* [1975] Fam 47, [1975] 1 All ER 697, CA; *Wheeler v Leicester City Council* [1985] AC 1054, [1985] 2 All ER 1106, HL; *R v Central Independent Television plc* [1994] 3 All ER 641 at 652-653, CA, per Hoffmann LJ.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/E. PRINCIPLES REGARDING HUMAN RIGHTS AND CITIZEN'S RIGHTS/1464. Detriment to property rights and economic interests.

#### **1464. Detriment to property rights and economic interests.**

It is a principle of legal policy<sup>1</sup> that the property and other economic interests of a person should be respected<sup>2</sup>, and therefore that, as an aspect of the principle against doubtful penalisation, such interests of a person should not be interfered with, particularly without adequate compensation<sup>3</sup>, except under clear authority of law<sup>4</sup>. An Act should not, therefore, be construed so as to interfere with or prejudice established private rights under contracts<sup>5</sup> or the title to property<sup>6</sup> unless it is clearly intended to do so.

Strict construction<sup>7</sup> used to be applied to taxing Acts<sup>8</sup>; but the modern attitude of the courts is that the revenue from taxation is essential to the running of the state, and that the duty of the judiciary is to aid its collection while remaining fair to the subject<sup>9</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 Under the European Convention on Human Rights, every natural or legal person is entitled to the peaceful enjoyment of his possessions and no one is to be deprived of his possessions except in the public interest and by due process of law: see Protocol 1. As to the European Convention on Human Rights see further PARA 1455 ante; and see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 See PARA 1456 ante.

4 It was said by Pratt CJ in the leading case against general warrants that: 'The great end, for which men entered into society, was to secure their property. That right is preserved sacred and incommunicable in all instances, where it has not been.... abridged by some public law for the good of the whole': *Entick v Carrington* (1765) 19 State Tr 1029 at 1066. It follows that whenever an enactment is alleged to authorise interference with property the court will apply the principle against doubtful penalisation. The interference may take many forms. All kinds of taxation involve detriment to property rights. So do many criminal penalties, such as fines, compensation orders and costs orders. Compulsory purchase, trade regulations and restrictions, import controls, forced redistribution on divorce or death, and child support orders are further categories. As so often in statutory interpretation, there are other criteria operating in favour of all these and the result is a balancing exercise: see PARA 1378 ante. See eg *Hammond v Hocking* (1884) 12 QBD 291 at 292 (Bills of Sale Act (1878) Amendment Act 1882 s 7 not to be so construed as to interfere with honest transactions or impair securities); *More v More* [1962] Ch 424 at 430, [1962] 1 All ER 125 at 127 (protection of rights of creditors on annulment of



bankruptcy petition); *R v Evans* [1963] 1 QB 979 at 989, [1961] 1 All ER 313 at 318, CCA (compensation order did not lapse with cessation of probation order); *Hartnell v Minister of Housing and Local Government* [1965] AC 1134 at 1172-1173, [1965] 1 All ER 490 at 504-505, HL (interference with planning rights of caravan site owner); *Allen v Thorn Electrical Industries Ltd* [1968] 1 QB 487 at 503, [1967] 2 All ER 1137, CA (contractual rights not to be taken away on an ambiguity); *DPP v Ottewill* [1970] AC 642 at 649, [1968] 3 All ER 153 at 157, HL (ambiguity should be given interpretation least unfavourable to accused); *Methuen-Campbell v Walters* [1979] QB 525 at 542, [1979] 1 All ER 606 at 620, CA, per Buckley LJ (construction in favour of party disappropriated); *Chilton v Telford Development Corp* [1987] 3 All ER 992, [1987] 1 WLR 872, CA (compulsory acquisition of land); *Rickless v United Artists Corp* [1988] QB 40, [1987] 1 All ER 679, CA (preserving property rights on death).

5 *Morris v Mellin* (1827) 6 B & C 446 at 449; *Bryan v Child* (1850) 5 Exch 368; *Walsh v Secretary of State for India* (1863) 10 HL Cas 367 at 386; *Gardner v Lucas* (1878) 3 App Cas 582 at 603, HL (Act not to be so construed as to make binding what was not binding before); *Western Counties Rly Co v Windsor and Annapolis Rly Co* (1882) 7 App Cas 178 at 189, PC; *Barlow v Teal* (1885) 15 QBD 403 (affd 15 QBD 501, CA); *Wilcock v Booth* (1920) 89 LjKB 864, DC; *Allen v Thorn Electrical Industries Ltd* [1968] 1 QB 487, [1967] 2 All ER 1137, CA.

6 *Scales v Pickering* (1828) 4 Bing 448 at 452; *Ex p Clayton* (1830) 1 Russ & M 369; *Webb v Manchester and Leeds Rly Co* (1839) 4 My & Cr 116 at 120; *Arnold v Gravesend Corp* (1856) 2 K & J 574 at 591; *Lang v Kerr, Anderson & Co* (1878) 3 App Cas 529 at 535, HL; *Wake v Redfearn* (1880) 43 LT 123 at 126; *Metropolitan Asylum District Managers v Hill* (1881) 6 App Cas 193 at 208, HL; *Hough v Windus* (1884) 12 QBD 224 at 237, CA; *Westminster Corp v London and North Western Rly Co* [1905] AC 426, HL; *British and Foreign Marine Insurance Co v Gaunt* [1921] 2 AC 41 at 48, HL; *Ward v British Oak Insurance Co Ltd* [1932] 1 KB 392, CA; *Marshall v Blackpool Corp* [1935] AC 16, HL; *National Real Estate and Finance Co v Hassan* [1939] 2 KB 61, [1939] 2 All ER 154, CA. See also COMPULSORY ACQUISITION OF LAND.

7 See PARA 1379 ante.

8 See eg *Tomkins v Ashby* (1827) 6 B & C 541 at 542 (stamp duty not to be charged unless intention plain); *Re Micklethwait* (1855) 11 Exch 452 at 456 (subject not to be taxed without clear words); *Partington v A-G* (1869) LR 4 HL 100 at 122 (equitable construction not admissible in a taxing statute); *Oriental Bank v Wright* (1880) 5 App Cas 842 at 856, PC (clear and unambiguous language necessary); *Cape Brandy Syndicate v IRC* [1921] 1 KB 64 at 71 per Rowlatt J (approved in *Canadian Eagle Oil Co v R* [1946] AC 119 at 140, [1945] 2 All ER 499 at 507, HL); *IRC v R Woolf (Rubber) Ltd* [1962] Ch 35 at 44-45, [1961] 2 All ER 651 at 654-655, CA (literal reading of definition of 'member' of a company in the Income Tax Act 1952 s 255(2) (repealed) departed from where it would have made lending banker liable for surtax (now abolished)); *South West Water Authority v Rumble's* [1985] AC 609, [1985] 1 All ER 513, HL (water rate chargeable under the Water Act 1973 s 30 (repealed) for 'facilities provided'; would not be so chargeable where (as was not the case on the facts) facilities not used by occupier).

9 See eg *IRC v Berrill* [1982] 1 All ER 867 at 880, [1981] 1 WLR 1449 at 1460-1461 (construction rejected which would have made it impossible for Inland Revenue to raise an assessment); *IRC v Scottish and Newcastle Breweries Ltd* [1982] 2 All ER 230 at 233, [1982] 1 WLR 322 at 325, HL, per Lord Wilberforce (inflation of trading expenses); *Reed (Inspector of Taxes) v Nova Securities Ltd* [1985] 1 All ER 686, [1985] 1 WLR 193, HL; *Re Preston* [1985] AC 835; sub nom *Preston v IRC* [1985] 2 All ER 327, HL. As to the construction of taxing Acts see also INCOME TAXATION vol 23(1) (Reissue) PARA 22.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/E. PRINCIPLES REGARDING HUMAN RIGHTS AND CITIZEN'S RIGHTS/1465. Detriment to status or reputation.

#### **1465. Detriment to status or reputation.**

It is a principle of legal policy<sup>1</sup> that the status and reputation of a person should be upheld<sup>2</sup>, and therefore that, as an aspect of the principle against doubtful penalisation<sup>3</sup>, that status or reputation should not be impaired or endangered, except under clear authority of law<sup>4</sup>.

<sup>1</sup> As to legal policy see PARAS 1431-1432 ante.

2 The European Convention on Human Rights does not reproduce the provision in the Universal Declaration of Human Rights (Paris, 10 December 1948; UN 2 (1949); Cmd 7662) stating that no one shall be subjected to 'attacks upon his honour and reputation' (see art 12). However the European Convention on Human Rights art 10, in conferring the right of free speech, does include an exception 'for the protection of the reputation or rights of others'. As to the European Convention on Human Rights see PARA 1455 ante; and see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 See PARA 1456 ante.

4 The existence of the common law rules regarding the tort of defamation and the offence of criminal libel indicate the policy of the law. The more a particular construction is likely to damage a person's reputation, the stricter the interpretation a court is likely to give. As to strict construction see PARA 1379 ante. Any conviction for a statutory offence imparts a stigma, even though an absolute discharge is given: *DPP for Northern Ireland v Lynch* [1975] AC 653 at 707; sub nom *Lynch v DPP for Northern Ireland* [1975] 1 All ER 913 at 949, HL ('the obloquy involved in the mere fact of conviction'). If an offence carries a heavy penalty, the stigma will be correspondingly greater: *Sweet v Parsley* [1970] AC 132 at 149, [1969] 1 All ER 347 at 350, HL ('the more serious or more disgraceful the offence the greater the stigma'). This is an important consideration in determining whether Parliament intended to require mens rea in a statutory offence: see further PARA 1356 ante. As to rights of status see *Viscountess Rhondda's Claim* [1922] 2 AC 339, HL (right to sit in the House of Lords). See also *R v Pheko* [1981] 3 All ER 84, [1981] 1 WLR 1117, CA.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/E. PRINCIPLES REGARDING HUMAN RIGHTS AND CITIZEN'S RIGHTS/1466. Infringement of privacy.

#### **1466. Infringement of privacy.**

Legal policy<sup>1</sup> does not protect privacy as such<sup>2</sup>, though it does in certain circumstances recognise duties of confidentiality based on pre-existing relations between the parties<sup>3</sup>. It is, however, a principle of legal policy that, as an aspect of the principle against doubtful penalisation<sup>4</sup>, the privacy of a person should not be treated as intended to be infringed<sup>5</sup> except under clear authority of law<sup>6</sup>. In applying this doctrine it is necessary to remember that legal policy proceeds on the principle that liberty is removed by law, not granted by law<sup>7</sup>.

Whenever the question of privacy arises in statutory interpretation there are likely to be countervailing factors<sup>8</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 An important element in the law's protection of privacy springs from the principle that a person's home is his castle: see PARA 1460 ante.

3 There is no principle in English law by which documents are protected from discovery by reason of confidentiality alone. This does not mean that, in deciding whether to order discovery under statutory powers, an authority is intended to ignore the question of confidentiality; it is to be taken into account along with other factors: see *Science Research Council v Nassé* [1980] AC 1028 at 1065, [1979] 3 All ER 673 at 679, HL. As to the confidentiality of communications between solicitor and client see LEGAL PROFESSIONS vol 65 (2008) PARA 740.

4 See PARA 1456 ante.

5 Under the European Convention on Human Rights everyone has the right to respect for his private life and his correspondence, with exceptions for national security, public safety, economic wellbeing of the state, prevention of crime or disorder, protection of health or morals, and the freedom of others: see art 8. As to the European Convention on Human Rights see further PARA 1455 ante; and see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

6 Under the Licensing Act 1964 a constable has power to enter licensed premises for the purpose of preventing or detecting the commission of any offence: see s 186(1) (substituted by the Licensing (Amendment) Act 1977 s 1). It was held in *Duncan v Dowling* [1987] 1 QB 575 that a predecessor of this section as originally enacted did not authorise a constable to enter unless he had some reasonable ground for suspecting a breach

of the law. This is now enshrined in statute: see the Licensing Act 1964 s 186(1)(b) (as so substituted) conferring a power to enter at any time outside the specified hours 'when he suspects, with reasonable cause, that such an offence is being or is about to be committed there'.

7 See *Malone v Metropolitan Police Comr (No 2)* [1979] Ch 344 at 366, [1979] 2 All ER 620 at 638 per Megarry V-C, rejecting the contention that nothing is lawful that is not positively authorised by law.

8 As to the weighing and balancing of interpretative factors see PARA 1358 ante. See eg *Re X (A Minor)* [1975] Fam 47, [1975] 1 All ER 697, CA, where it was sought to prohibit the publication of discreditable details about a deceased person on the ground that this might harm his infant child if the child became aware of them. It was held that the public interest in free speech outweighed the possible harm to the child, and the injunction would be refused. For another case where breach of privacy had to be balanced against other human rights considerations see *W v W (1963)* [1964] P 67 at 70-71; sub nom *W v W (No 4)* [1963] 2 All ER 386 at 387-388 per Cairns J (court refused to direct that an extensive exploratory operation should be made by a surgeon on the plaintiff's body against his will); on appeal [1964] P 67, [1963] 2 All ER 841, CA.

## UPDATE

### 1466 Infringement of privacy

NOTES 5, 6--See *Secretary of State for the Home Department v GG (proceedings under the Prevention of Terrorism Act 2005)* [2009] EWCA Civ 786, [2009] All ER (D) 247 (Jul) (general words as to obligations which could be imposed on person subject to control order could not permit obligation that he submit to personal searches).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/E. PRINCIPLES REGARDING HUMAN RIGHTS AND CITIZEN'S RIGHTS/1467. Interference with rights of legal process.

### 1467. Interference with rights of legal process.

It is a principle of legal policy<sup>1</sup> that the rights of a person in relation to legal remedies and legal proceedings should be protected<sup>2</sup> and therefore that, as an aspect of the principle against doubtful penalisation<sup>3</sup>, such rights should not be removed or impaired, except under clear authority of law<sup>4</sup>.

The principle covers the right not to have legal obligations imposed<sup>5</sup>, or be embroiled in legal proceedings against one's will<sup>6</sup>, or be 'shut out from the seat of justice'<sup>7</sup>, or to be denied trial by jury<sup>8</sup>, or to be deprived of control over the conduct of legal proceedings<sup>9</sup>, or to be denied a remedy<sup>10</sup>, or to be deprived of a right of appeal<sup>11</sup> or hindered in one's appeal<sup>12</sup>.

It follows from this principle that enactments giving jurisdiction to inferior courts, to government departments or to bodies created ad hoc must be strictly construed<sup>13</sup>. There is a presumption that where an Act confers on an administrative tribunal or authority, as distinct from a court of law, power to decide particular questions defined by the Act, Parliament intends to confine that power to answering those questions as so defined<sup>14</sup>, and the procedure prescribed must be exactly followed where it is important to do so having regard to the general object intended to be secured by the statute<sup>15</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 Under the European Convention on Human Rights there is protection for rights in legal proceedings which covers safeguards in case of arrest, the presumption of innocence, the right to a fair trial, the right of

cross-examination, the publicity of proceedings and other matters: see arts 5, 6. As to the European Convention on Human Rights see further PARA 1455 ante; and see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 See PARA 1456 ante.

4 The rule of law requires that the law should apply equally, and that all should be equal before it: *Richards v McBride* (1881) 8 QBD 119 at 124, DC. The 'due process' principle is embedded in ancient constitutional enactments from Magna Carta onwards. The statute 28 Edw 3 c 3 (1354) enacts that 'no man of what estate or condition that he be, shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited nor put to death, without being brought to answer by due process of law'. The Bill of Rights (1689) forbids excessive bail, excessive fines, and cruel and unusual punishments; and requires jurors to be duly empanelled and returned. Speaking of Magna Carta cl 40 (to no one will we sell, deny or delay right or justice), Staughton LJ said that such formulations were statements of broad general principle, and were 'not intended to apply literally and in every case where other considerations were involved': *R v Secretary of State for the Home Department, ex p Wynne* [1992] QB 406 at 427, [1992] 2 All ER 301 at 315, CA; affd sub nom *Wynne v Secretary of State for the Home Department* [1993] 1 All ER 574; sub nom *R v Secretary of State for the Home Department, ex p Wynne* [1993] 1 WLR 115, HL. This is a reference to the weighing and balancing of interpretative factors discussed in PARA 1378 ante. As to 'delay' in Magna Carta cl 40 see also *A-G's Reference (No 1 of 1990)* [1992] QB 630 at 640, [1992] 3 All ER 169 at 173-174, CA, per Lord Lane CJ.

5 *R v Loxdale* (1758) 1 Burr 445; *R v Cousins* (1864) 33 LJMC 87; *Finch v Bannister* [1908] 2 KB 441; *Gaby v Palmer* (1916) 85 LJB 1240 at 1244; *Harrington v North London Polytechnic* [1984] 3 All ER 666, [1984] 1 WLR 1293, CA.

6 *Re Beaumont decd, Martin v Midland Bank Trust Co Ltd* [1980] Ch 444 at 458, [1980] 1 All ER 266 at 276.

7 *Aspinall v Sterling Mansell Ltd* [1981] 3 All ER 866 at 867 per Hodgson J. See *Customs and Excise Comrs v Cure & Deeley Ltd* [1962] 1 QB 340, [1961] 3 All ER 641; *Raymond v Honey* [1983] 1 AC 1 at 12-13, [1982] 1 All ER 756 at 760-761, HL, per Lord Wilberforce.

8 *Looker v Halcomb* (1827) 4 Bing 183 at 188. See also *R v Craske, ex p Metropolitan Police Comr* [1957] 2 QB 591, [1957] 2 All ER 772, DC; *R v St Albans Juvenile Court, ex p Godman* [1981] QB 964 at 967, [1981] 2 All ER 311 at 314, DC; *R v Amersham Juvenile Court, ex p Wilson* [1981] QB 969 at 976-977, [1981] 2 All ER 315 at 320, DC. Cf *Gray v R* (1844) 11 Cl & Fin 427; *Levinger v R* (1870) LR 3 PC 282 at 289 (both cases concerning the former right of peremptory challenge).

9 *Re Vexatious Actions Act 1896, Re Boaler* [1915] 1 KB 21 at 34-35, CA. See also *Littler v Thomson* (1839) 2 Beav 129 at 131, and *A-G v Butterworth* [1963] 1 QB 696, [1962] 3 All ER 326, CA (rights as to witnesses); *Starr v National Coal Board* [1977] 1 All ER 243 at 249, [1977] 1 WLR 63 at 70-71, CA, per Scarman LJ (right to 'defend himself in the litigation as he and his advisers think fit [and] choose the witnesses that he will call'); *Roberts Petroleum Ltd v Bernard Kenny Ltd* [1983] 2 AC 192, [1983] 1 All ER 564, HL (restricted right to cite unreported cases: for criticisms of this ruling see (1983) 80-i LS Gaz 1635; (1984) 81-i LS Gaz 257); *Wright v British Railways Board* [1983] 2 AC 773 at 785, [1983] 2 All ER 698 at 705, HL, and *Tudor Grange Holdings Ltd v Citibank NA* [1992] Ch 53 at 65-66, [1991] 4 All ER 1 at 13 (right of parties to compromise litigation); *R v Crown Court at Guildford, ex p Siderfin* [1990] 2 QB 683, [1989] 3 All ER 7, DC (right to legal representation).

10 See eg *Sanders v Scott* [1961] 2 QB 326, [1961] 2 All ER 403, DC (technical defence strictly construed); *Boulting v Assoca of Cinematograph, Television and Allied Technicians* [1963] 2 QB 606, [1963] 1 All ER 716, CA (quia timet injunction).

11 *Mackey v James Henry Monks (Preston) Ltd* [1918] AC 59 at 91; *Investors in Industry Commercial Properties Ltd v Norwich City Council* [1986] AC 822, [1986] 2 All ER 193, HL.

12 *Allen v Allen* [1985] Fam 8, [1985] 1 All ER 93.

13 *R v Bird, ex p Needes* [1898] 2 QB 340 (rules made by court of quarter sessions); *Brown v Holyhead Local Board of Health* (1862) 1 H & C 601; *Scott v Pilliner* [1904] 2 KB 855, DC (local byelaws); *R v Board of Education* [1910] 2 KB 165, CA (affd sub nom *Board of Education v Rice* [1911] AC 179, HL) (exercise of powers by public authority).

14 *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, [1969] 1 All ER 208, HL; *Re Racal Communications Ltd* [1981] AC 374 at 382-383, [1980] 2 All ER 634 at 638, HL, per Lord Diplock.

15 *Howard v Bodington* (1877) 2 PD 203 at 211, Court of Arches, per Lord Penzance; *R v Essex County Court Judge* (1887) 18 QBD 704 at 708, CA; *Grunwick Processing Laboratories Ltd v Advisory, Conciliation and Arbitration Service* [1978] AC 655 at 691-692, [1978] 1 All ER 338 at 361-362, HL, per Lord Diplock, and at 703 and 370 per Lord Keith of Kinkel. See also PARAS 1238, 1349 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(v) Principles derived from Legal Policy/E. PRINCIPLES REGARDING HUMAN RIGHTS AND CITIZEN'S RIGHTS/1468. Other interference with human or citizen's rights.

#### **1468. Other interference with human or citizen's rights.**

It is a principle of legal policy<sup>1</sup> that a person should not be deprived of any of his human rights or rights as a citizen<sup>2</sup> and therefore that, as an aspect of the principle against doubtful penalisation<sup>3</sup>, such rights should not be removed or impaired, except under clear authority of law<sup>4</sup>. Such rights not already mentioned<sup>5</sup> include voting rights<sup>6</sup> and prisoners' rights<sup>7</sup>.

1 As to legal policy see PARAS 1431-1432 ante.

2 Under the European Convention on Human Rights free elections must be held at reasonable intervals by secret ballot, under conditions which ensure the free expression of the opinions of the people in the choice of the legislature: see Protocol 1. No one is to be expelled, by means either of an individual or of a collective measure, from the territory of the state of which he is a national; and no one is to be deprived of the right to enter the territory of the state of which he is a national: see Protocol 4. As to the European Convention on Human Rights see further PARA 1455 ante; and see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 See PARA 1456 ante.

4 The policy of the law is to protect the rights enjoyed by a person as a citizen. 'Citizenship is man's basic right for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen': *Perez v Brownell* (1958) 356 US 44 at 64 per Earl Warren CJ (emphasis in original).

5 See PARA 1455 et seq ante.

6 See *Randolph v Milman* (1868) LR 4 CP 107, Ex Ch; *Duke of Newcastle v Morris* (1870) LR 4 HL 661; *Piercy v Maclean* (1870) LR 5 CP 252 at 261 per Willes J; *R v Harrald* (1872) LR 7 QB 361; *Hipperson v Electoral Registration Officer for the District of Newbury* [1985] QB 1060 at 1067, [1985] 2 All ER 456 at 458, CA, per Donaldson MR.

7 See *Raymond v Honey* [1983] 1 AC 1 at 10, [1982] 1 All ER 756 at 759, HL, per Lord Wilberforce; *Leech v Parkhurst Prison Deputy Governor*, *Prevot v Long Lartin Prison Deputy Governor* [1988] AC 533, [1988] 1 All ER 485, HL; *R v Secretary of State for the Home Department, ex p Wynne* [1992] QB 406, [1992] 2 All ER 301, CA; affd sub nom *Wynne v Secretary of State for the Home Department* [1993] 1 All ER 574; sub nom *R v Secretary of State for the Home Department, ex p Wynne* [1993] 1 WLR 115, HL.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vi) Presumptions based on Nature of Legislation/A. NATURE OF LEGISLATIVE PRESUMPTIONS/1469. In general.

#### **(vi) Presumptions based on Nature of Legislation**

##### **A. NATURE OF LEGISLATIVE PRESUMPTIONS**

#### **1469. In general.**

One of the four categories of interpretative criteria applicable to statutory construction<sup>1</sup> consists of various presumptions which the common law has laid down about what Parliament is likely to intend regarding the legal meaning of an enactment<sup>2</sup>. These presumptions recognise the essential nature of legislation, and look in particular to its effective working<sup>3</sup>.

1 As to the interpretative criteria see PARA 1375 ante; and as to the basic rule of statutory interpretation see PARA 1376 ante.

2 As to the legal meaning, ie the meaning intended by the legislator, see PARAS 1373-1374 ante.

3 See PARA 1470 et seq post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vi) Presumptions based on Nature of Legislation/B. MISCELLANEOUS PRESUMPTIONS/1470. Presumption favouring literal meaning.

## **B. MISCELLANEOUS PRESUMPTIONS**

### **1470. Presumption favouring literal meaning.**

Prima facie, the legal meaning of an enactment as it applies to particular facts<sup>1</sup> is presumed<sup>2</sup> to be that which corresponds to the literal meaning of the enactment in relation to those facts<sup>3</sup>.

The literal meaning of an enactment in relation to particular facts is determined as follows. The starting point is the grammatical meaning of the enactment taken in isolation, that is the meaning it bears in relation to those facts when, as a piece of English prose, it is construed, without reference to any other text, according to the rules and usages of grammar, syntax and punctuation, including the accepted linguistic canons of construction<sup>4</sup>. This grammatical meaning may be clear<sup>5</sup> or ambiguous<sup>6</sup> or obscure<sup>7</sup>. If the enactment is found to be obscure, it is first necessary for the court to work out if possible what is the intended grammatical version, which may be referred to as the corrected version<sup>8</sup>. When found, the corrected version may be clear or ambiguous<sup>9</sup>.

1 As to the legal meaning see PARAS 1373-1374 ante. In practical terms, the person seeking to arrive at the legal meaning is concerned only with the enactment as it applies to particular facts: see PARAS 1377-1378 ante.

2 As to the nature of legislative presumptions see PARA 1469 ante.

3 *Lowther v Bentinck*(1874) LR 19 Eq 166 at 169 per Jessel MR; *Caledonian Rly Co v North British Rly Co*(1881) 6 App Cas 114 at 121, HL, per Lord Selborne LC; *Lumsden v IRC*[1914] AC 877 at 892 per Lord Haldane LC; *Hollands v Williamson*[1920] 1 KB 716 at 719 per Earl of Reading CJ; *Capper v Baldwin*[1965] 2 QB 53 at 61, [1965] 1 All ER 787 at 791, DC, per Lord Parker CJ; *Enmore Estates Ltd v Darsan*[1970] AC 497, PC; *Ex p Godwin*[1992] QB 190 at 197; sub nom *R v Crown Court at Southwark, ex p Godwin* [1991] 3 All ER 818 at 822, CA, per Glidewell LJ; *R v Secretary of State for the Home Department, ex p Ejaz*[1994] QB 496, [1994] 2 All ER 436, CA. Other factors may need to be taken into account: see PARA 1378 ante. However the literal meaning, at least of a modern Act, is to be treated as pre-eminent when construing the enactments contained in the Act. It may occasionally be overborne by other factors, but they must be powerful to achieve this. With older Acts, the weight attached to the literal meaning tends to be less. Lord Bridge said of an Act of 1847 that it was 'legitimate to take account, when construing old statutes, of the prevailing style and standards of draftsmanship': *Wills v Bowley*[1983] 1 AC 57 at 101, [1982] 2 All ER 654 at 680, HL. The literal interpretation of an ancient statute will not be whittled down on account of its antiquity: see *HRH Prince Ernest Augustus of Hanover v A-G*[1956] Ch 188 at 207, [1955] 3 All ER 647 at 655-656, CA; affd [1957] AC 436, [1957] 1 All ER 49, HL. If the literal meaning produces a legal nonsense however, the court will not follow it: *Salmon v Duncombe*(1886) 11 App Cas 627, PC.

4 See PARA 1483 et seq post.

5 le, free from doubt and capable of only one construction.

6 le, free from doubt except that it is capable of two or more constructions: see PARA 1421 note 5 ante. The commonest case arises when a broad term, ie one covering a wide range of meanings, is used. Judicial descriptions of the broad term include 'open-ended expressions' (*Express Newspapers Ltd v McShane*[1980] AC 672 at 684, [1980] 1 All ER 65 at 70, HL), 'word of the most loose and flexible description' (*Green v Marsden* (1853) 1 Drew 646) and 'somewhat comprehensive and somewhat indeterminate terms' (*Campbell v Adair* 1945 JC 29 at 33).

The broadest terms, such as 'reasonable' or 'just', virtually give the court or official an unlimited delegated authority, subject to the remedies available on appeal or review. Of the broad term 'a chance', as used in the Supreme Court Act 1981 s 32A(1) (as added) (which refers to an action for damages for personal injuries in which there is a chance that the injured person will develop some serious disease or suffer some serious deterioration in his condition) Scott Baker J said 'the legislature has used a wide word here and used it deliberately', adding 'it can cover a wide range between, on the one hand, something that is de minimis and, on the other hand, something that is a probability': *Willson v Ministry of Defence* [1991] ICR 595 at 599, [1991] 1 All ER 638 at 642. As to the de minimis principle see PARA 1441 ante. It is not for the court to attempt to define a broad term which Parliament has deliberately left undefined: see *Re Smalley*[1985] AC 622 at 644, [1985] 1 All ER 769 at 780, HL, per Lord Bridge ('It must not be thought... I am offering a definition of a phrase which Parliament has chosen not to define. If the statutory language is, as here, imprecise, it may well be impossible to prescribe in the abstract a precise test to determine on which side of the line any case should fall and, therefore, necessary to proceed... on a case by case basis'); as to this dictum see *R v Crown Court at Wood Green, ex p DPP*[1993] 2 All ER 656 at 661, [1993] 1 WLR 723 at 728, DC, per Mann LJ.

The practice is growing of including in an Act which uses a broad term some indication of how Parliament intends the term to be construed. There is an important category of cases where rules of construction are laid down by statute: see PARA 1380 et seq ante. Apart from itself containing guidelines, an Act may authorise or require them to be laid down by a minister or other authority (see, eg, the Housing Act 1985 s 71 and comment thereon by Lord Griffiths in *R v Oldham Metropolitan Borough Council, ex p Garlick*[1993] AC 509 at 517; sub nom *Garlick v Oldham Metropolitan Borough Council* [1993] 2 All ER 65 at 69, HL). Where, under powers conferred by an enactment, a minister or other authority issues guidelines as to the construction of that or any other enactment, and the court on judicial review finds that the guidelines are incorrect in law, it will make a declaration to that effect: *R v Secretary of State for the Environment, ex p Tower Hamlets London Borough Council*[1993] QB 632, [1993] 3 All ER 439, CA. As to judicial review see PARA 1348 ante.

7 le disorganised, garbled or otherwise semantically obscure or unintelligible.

8 See *R v Oakes*[1959] 2 QB 350, [1959] 2 All ER 92, CCA. By an obscure text is meant one that has some obvious defect such as the accidental omission of words or addition of unwanted words, or a wrong order of words: see eg *Lyde v Barnard* (1836) 1 M & W 101 (enactment contained the unnecessary and meaningless word 'upon'); *Re Wainwright* (1843) 1 Ph 258 (reference to convict added by court); *Green v Wood*(1845) 7 QB 178 at 185 (enactment contained meaningless phrase 'or execution issued'); *Jubb v Hull Dock Co*(1846) 9 QB 443 at 455 (court found it necessary to insert 'to the owner or party interested' in order to make sense of the enactment); *Stone v Yeovil Corpn* (1876) 1 CPD 691 at 701 per Brett J (court rejected 'such' as meaningless); *Laird v Briggs*(1881) 19 ChD 22 at 33, CA ('convenient' ignored as an absurdity); *R v Ettridge*[1909] 2 KB 24, CCA (court rejected 'by the verdict'); *Bristol Guardians v Bristol Waterworks Co*[1914] AC 379 at 388, HL (omitted words added); *A-G v Beauchamp*[1920] 1 KB 650, DC (omitted words added); *Hollyhomes v Hind*[1944] KB 571, [1944] 2 All ER 8, DC (words ignored as meaningless); *Re Lockwood, Atherton v Brooke*[1958] Ch 231, [1957] 3 All ER 520 (words ignored); *R v Oakes* supra (unintelligible inclusion of 'and'); *R v Governor of Brixton Prison, ex p Naranjan Singh*[1962] 1 QB 211; sub nom *Re Naranjan Singh*[1961] 2 All ER 565, DC (court inserted comma); *Adler v George*[1964] 2 QB 7, [1964] 1 All ER 628, DC ('in the vicinity of' read as 'in or in the vicinity of'); *Coast Brick & Tile Works Ltd v Premchand Raichand Ltd*[1967] 1 AC 192, [1966] 1 All ER 819, PC ('the security' read as 'a security'); *Wiltshire v Barrett*[1966] 1 QB 312, [1965] 2 All ER 271, CA ('person committing an offence' construed to include 'apparently committing'); *Corocraft Ltd v Pan American Airways Inc*[1969] 1 QB 616, [1969] 1 All ER 82, CA (mistranslation of international convention); *Rockwell Machine Tool Co Ltd v Customs and Excise Comrs* [1970] 2 Lloyd's Rep 176 ('and' was read as 'but'); *Ministry of Housing and Local Government v Sharp*[1970] 2 QB 223 at 264, [1970] 1 All ER 1009 at 1015, CA, per Lord Denning MR ('in such manner' was read as including 'to such effect'); *Federal Steam Navigation Co Ltd v Department of Trade and Industry*[1974] 2 All ER 97, [1974] 1 WLR 505, HL ('or' was construed to mean 'and/or'); *R v Johnson*[1976] 1 All ER 869, [1976] 1 WLR 426, CA (omitted words added); *Laker Airways Ltd v Department of Trade*[1977] QB 643 at 699, [1977] 2 All ER 182 at 187, CA, per Lord Denning MR ('words of a purist intent on literal accuracy' ignored as 'they contribute nothing but confusion'); *Wills v Bowley*[1983] 1 AC 57, [1982] 2 All ER 654, HL (omitted words added); *Gubay v Kington (Inspector of Taxes)* [1984] 1 All ER 513, [1984] 1 WLR 163, HL (confusion in taxing Act); *R v Birmingham Justices, ex p Hodgson*[1985] QB 1131, [1985] 2 All ER 193, CA (Act's mistaken assumption that there would always be a trial); *Re Gillard*[1986] AC 442; sub nom *Chief Constable of West Midlands Police v Gillard*[1985] 3 All ER 634, HL (court rejected 'before the conclusion of the evidence for the prosecution'). Further examples of obscure texts are: the House of Commons Disqualification Act 1975 s 10(2) (as originally enacted) (the enactments 'specified in Sch 4 to this Act' are repealed, but the Act contains

no Sch 4); the Salford Hundred Court of Record (Extension of Jurisdiction) Rules 1955, SI 1955/1295, r 2 (revoked) (a defendant authorised to apply to have the action transferred to 'the county court in which he resides or carried on business'). As to misprints see further *R v Wilcock* (1845) 7 QB 317; *Re Boothroyd* (1846) 15 M & W 1; *Eton College v Minister of Agriculture, Fisheries and Food* [1964] Ch 274, [1962] 3 All ER 290. Where an obvious error is made in transcribing an enactment for inclusion in a consolidation Act there is an inference that the original wording should be followed: eg the Law of Property Act 1922 s 125(2) (repealed) empowered trustees to appoint agents for 'executing and perfecting assurances of property'. In the Trustee Act 1925 s 23(2) this appears as a reference to 'insurances' of property; for a judicial comment on this error see *Green v Whitehead* [1930] 1 Ch 38 at 45. Two errors appear in the Interpretation Act 1978 s 25(1), Sch 3 (repeals) (a consolidation Act); the short title of the National Health Service Reorganisation Act 1973 is given as the National Health Reorganisation Act 1973; and a reference is made to the Medical Act 1978 Sch 5 (now repealed) instead of to Sch 6 (repealed). For another consolidation Act case see *The Arabert* [1963] P 102, [1961] 2 All ER 385. As to the court's duty to find the corrected version where mistakes occur see *Kapur v Shields* [1976] 1 All ER 873 at 879, [1976] 1 WLR 131 at 139 per Phillips J; cf *St Aubyn v A-G* [1952] AC 15 at 30, [1951] 2 All ER 473 at 484, HL, per Viscount Simonds. The Queen's Printer corrects merely typographical errors; eg as originally promulgated, the Landlord and Tenant (Rent Control) Act 1949 s 11(5) (repealed) referred to the Furnished Houses (Rent Control) Act 1946 s 6 instead of s 7 (both now repealed). This was corrected in subsequent published copies of the 1949 Act. As to the Queen's Printer see PARA 1249 ante; and as to rectifying construction see PARA 1472 post.

9 The result is that the court arrives at a stage where, in its application to the facts of the case, the enactment (or where it was obscure, the corrected version) is either clear or ambiguous. In the former case, the literal meaning corresponds to the clear meaning. In the latter case the literal meaning is ambiguous, ie it may be any of the grammatical meanings. The choice between the possible versions of an ambiguous enactment is made by applying the various interpretative criteria: see PARA 1378 ante. For cases where a strained construction may be necessary see PARA 1475 post.

## UPDATE

### 1470 Presumption favouring literal meaning

NOTE 6--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vi) Presumptions based on Nature of Legislation/B. MISCELLANEOUS PRESUMPTIONS/1471. Presumption favouring consequential construction.

### 1471. Presumption favouring consequential construction.

It is presumed<sup>1</sup> to be the legislator's intention that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment<sup>2</sup> corresponds to its legal meaning<sup>3</sup>, should assess the likely consequences of adopting each construction, both to the parties in the case and (if and when similar facts arise in future cases) for the law generally. If on balance the consequences of a particular construction are more likely to be adverse than beneficial<sup>4</sup> this is a factor telling against that construction<sup>5</sup> and may call for a strained interpretation<sup>6</sup>.

Where the application of an enactment yields an adverse result, the interpretative factors may on balance indicate that the court should curtail its application. This is known as strict construction. Equally, where the application of an enactment yields a beneficial result the interpretative factors may on balance indicate that the court should widen its application. This is known as liberal construction<sup>7</sup>.

1 As to the nature of legislative presumptions see PARA 1469 ante.



2 As to the opposing constructions see PARA 1377 ante.

3 As to the legal meaning, which embodies the legislator's intention, see PARAS 1372-1373 ante.

4 The consequences of a particular construction may be regarded as 'adverse' if they are such that in the light of the interpretative criteria (see PARA 1375 ante) the court views them with disquiet as unlikely to have been intended. Any other consequences (whether merely neutral or positively advantageous) may be called 'beneficent'. For this purpose a consequence clearly intended by Parliament is to be treated as beneficent even though the judge personally dislikes it, since the court is not permitted to canvass the merits of what Parliament has undoubtedly willed: see PARAS 1201-1202 ante. It is only where there is real doubt as to Parliament's true intention regarding the meaning of the enactment in relation to the facts of the instant case that the adverse/beneficent test comes into play, though the likelihood of a strongly adverse consequence may in itself raise doubt. The test covers a very wide field; eg a result is 'adverse' if it frustrates the purpose of the Act, or works injustice, or is contrary to public policy, or is productive of inconvenience or hardship, and so on. Parliament is presumed not to intend such consequences: see PARA 1431 et seq ante. In judging consequences it is important to take account both of consequences to the parties in the instant case and consequences for the law generally. As to real doubt see PARA 1374 ante.

5 As to the weighing and balancing of interpretative factors see PARA 1378 ante.

6 An enactment cannot be interpreted according to its literal meaning without testing that meaning against the practical outcome of giving effect to it: *R v Committee of Lloyd's, ex p Moran* (1983) Times, 24 June per Mustill J. As to the literal meaning of an enactment see PARA 1470 ante. See also *ICI Ltd v Shatwell* [1965] AC 656 at 675, [1964] 2 All ER 999 at 1005-1006, HL, per Viscount Radcliffe. As to strained interpretation see eg *R v Stratford-on-Avon District Council, ex p Jackson* [1985] 3 All ER 769 at 772, [1985] 1 WLR 1319 at 1322, CA. Where the enactment is grammatically ambiguous (see PARA 1470 ante), assessment of the consequences of each of the opposing constructions may help to fix the meaning one way or the other. Lord Reid said 'It is always proper to construe an ambiguous word or phrase in light of the reasonableness of the consequences': *Gartside v IRC* [1968] AC 553 at 612, [1968] 1 All ER 121 at 131, HL. See also *Fry v IRC* [1959] Ch 86 at 105, [1958] 3 All ER 90 at 94, CA; *The RL Alston* (1882) 8 PD 5 at 9, CA; *Coutts & Co v IRC* [1953] AC 267 at 281, [1953] 1 All ER 418 at 421, HL; *Brunton v New South Wales Comrs of Stamp Duties* [1913] AC 747 at 759, PC.

7 As to strict and liberal construction see further PARA 1379 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vi) Presumptions based on Nature of Legislation/B. MISCELLANEOUS PRESUMPTIONS/1472. Presumption favouring rectifying construction.

### 1472. Presumption favouring rectifying construction.

It is presumed<sup>1</sup> to be the legislator's intention that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment<sup>2</sup> corresponds to its legal meaning<sup>3</sup>, should apply a construction which rectifies any error in the drafting of the enactment (a rectifying construction)<sup>4</sup>. Whether it is right in a particular case to apply a rectifying construction will depend on whether, on weighing the relevant interpretative factors<sup>5</sup>, the court finds there are no countervailing factors having greater weight. There are six categories of cases (which may overlap) where rectifying construction may be required:

- (1) the garbled text (which is grammatically incomplete or otherwise corrupt)<sup>6</sup>;
- (2) the text containing an error of meaning<sup>7</sup>;
- (3) the text containing a *casus omissus* (omitted case), so that the literal meaning<sup>8</sup> is narrower than the object<sup>9</sup>;
- (4) the text containing a *casus male inclusus* (wrongly included case), so that the literal meaning is wider than the object<sup>10</sup>;
- (5) the case where there is textual conflict<sup>11</sup>; and
- (6) the case where Parliament based its enactment on an error of law<sup>12</sup>.

1 As to the nature of legislative presumptions see PARA 1469 ante.

2 As to the opposing constructions see PARA 1377 ante.

3 As to the legal meaning, which embodies the legislator's intention, see PARAS 1373-1374 ante.

4 There are occasions when the language of the legislature must be modified, in order to avoid inconsistency with its manifest intentions: *Miller v Salomons* (1852) 7 Exch 475 at 553 per Parke B. Drafting errors frequently occur: see eg *Re Rowhook Mission Hall, Horsham, Channing-Pearce v Morris* [1985] Ch 62 at 80, [1984] 3 All ER 179 at 189. For an account of the various types of drafting error see Bennion, *Statute Law* (3rd Edn, 1990) Ch 19.

5 See PARA 1378 ante.

6 See PARA 1470 ante.

7 The meaning of an enactment may be vitiated by some error not apparent on the face of the text. The drafter may have misconceived the legislative project, or based the text on a mistake of fact; or there may have been an error in the applicable law, or mishandling of a legal concept. The court may be able to remedy such errors by applying a strained construction which accommodates the true facts and law without causing injustice or other disadvantage: see eg *R v Haughton Inhabitants* (1853) 22 LJM 89 at 92, 94; *Labrador Co v R* [1893] AC 104, PC; *Hoani Te Heuheu Tukino v Aotea District Maori Land Board* [1941] AC 308, [1941] 2 All ER 93, PC; *IRC v Dowdall, O' Mahoney & Co* [1952] AC 401 at 426, [1952] 1 All ER 531 at 544, HL; *Roy William Robinson Ltd v Cox* (1968) 67 LGR 188, DC; *Dunsford v Pearson* [1970] 1 All ER 282, [1970] 1 WLR 222, DC; *R v Newcastle-upon-Tyne Gaming Licensing Committee, ex p White Hart Enterprises Ltd* [1977] 3 All ER 961, [1977] 1 WLR 1135, CA; *Meah v Roberts* [1978] 1 All ER 97, DC; *Windsors (Sporting Investments) Ltd v Oldfield, Boulton v Coral Racing Ltd* [1981] 2 All ER 718, [1981] 1 WLR 1176, DC; *Land Securities plc v Receiver for the Metropolitan Police District* [1983] 2 All ER 254, [1983] 1 WLR 439; *Harrison v Tew* [1989] QB 307 at 319-321, [1987] 3 All ER 865 at 872-873, CA (on appeal [1990] 2 AC 523, [1990] 1 All ER 321, HL).

8 As to the literal meaning see PARA 1470 ante.

9 Where the literal meaning of the enactment is narrower than the object of the legislator, the court may be required to apply a rectifying construction, as it is not in accordance with legal policy (see PARA 1431 ante) to allow a drafter's ineptitude to prevent the legislator's intention from being carried out: see eg *R v Corby Juvenile Court, ex p M* [1987] 1 All ER 992, [1987] 1 WLR 55. Sometimes, however, a *casus omissus* is too considerable to be remedied by a rectifying construction: see eg *Duo v Duo* [1992] 3 All ER 121; sub nom *Duo v Osborne (formerly Duo)* [1992] 1 WLR 611, CA.

10 The intention of Parliament is to remedy a mischief: see PARA 1474 post. Since an Act is a coercive instrument, backed by the physical force of the state, it is presumed that Parliament does not intend it to go wider in its operation than is necessary to remedy the mischief: see eg *Sidnell v Wilson* [1966] 2 QB 67 at 79, [1966] 1 All ER 681 at 685, CA, per Harman LJ; *Crook v Edmondson* [1966] 2 QB 81, [1966] 1 All ER 833, DC; *R v Ford* [1978] 1 All ER 1129, CA; *R v Kirkup* [1993] 2 All ER 802, [1993] 1 WLR 774, CA. The maxim *cessante ratione legis, cessat ipsa lex* (Co Litt 70b) (the reason for a law having ceased, the law itself ceases) does not apply in terms of time to statutes, since there is no doctrine of desuetude (see PARA 1282 ante) but may be applied without a temporal connection (see *Miliangos v George Frank (Textiles) Ltd* [1976] AC 443 at 471-479, [1975] 3 All ER 801 at 816-823, HL), ie in areas where the reason underlying the law is not applicable, the law does not apply. In this sense the maxim offers some justification for giving a strained construction where the literal meaning goes wider than the object.

11 Some form of rectification is essential where the court is faced with conflicting texts. Sedley J, giving the judgment of the Court of Appeal in a case where the court had to decide between two conflicting provisions of the Criminal Justice Act 1991, said: 'In such a situation... the court is affirmatively required to give the enactment a rectifying construction': *R v Deborah Jane Moore* (1994) (unreported) (Case No 94/4151/Y5). If the texts are within the same Act, the conflict is generally to be resolved by construing the Act as a whole: see PARA 1484 post. If the texts are in different Acts, the later usually prevails: see PARA 1289 et seq ante. Where the conflicting texts are in different Acts another possibility is that the Acts are not in pari materia, and that each text must be confined to its own sphere. As to when Acts are in pari materia see PARA 1220 ante. For an example of conflicting texts in different Acts see *Secretary of State for Defence v Guardian Newspapers Ltd* [1985] AC 339, [1984] 3 All ER 601, HL.

12 It is nevertheless to be assumed that when framing its enactments Parliament knows the existing state of the law: *R v Watford Inhabitants* (1846) 9 QB 626 at 635; *Young & Co v Royal Leamington Spa Corp'n* (1883) 8 App Cas 517 at 526, HL; *Re Local Government Act 1888, ex p Kent County Council and Dover Council, ex p Kent County Council and Sandwich Council* [1891] 1 QB 725, CA; *Black-Clawson International Ltd v Papierwerke*

*Waldhof-Aschaffenburg AG* [1975] AC 591 at 649, [1975] 1 All ER 810 at 845, HL, per Lord Simon of Glaisdale; *Quazi v Quazi* [1980] AC 744 at 814, [1979] 3 All ER 897 at 908, HL, per Lord Fraser of Tullybelton; *R v Chief National Insurance Comr, ex p Connor* [1981] QB 758 at 765, [1981] 1 All ER 769 at 774, DC, per Lord Lane CJ. This applies even in technical matters: eg the rules and practice in bankruptcy (*Re Bamed's Banking Co, Kellock's Case, Re Xeres Wine Shipping Co, ex p Alliance Bank* (1868) 3 Ch App 769 at 781 per Selwyn LJ), or liquidation of companies (*Re Demerara Rubber Co Ltd* [1913] 1 Ch 331 at 335), or a period of a notice to quit (*Thompson v Stimpson* [1961] 1 QB 195, [1960] 3 All ER 500, DC (whether clear days)) or the procedure adopted by the courts in relation to bills of indictment (*R v Raymond* [1981] QB 910 at 915, [1981] 2 All ER 246 at 250, CA). For further details as to rectifying construction see Bennion, *Statutory Interpretation* (2nd Edn, 1992) s 287.

## UPDATE

### 1472 Presumption favouring rectifying construction

NOTE 4--See also *R (on the application of Kelly) v Secretary of State for Justice; Re Gibson* [2008] EWCA Civ 177, [2008] 3 All ER 844.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vi) Presumptions based on Nature of Legislation/B. MISCELLANEOUS PRESUMPTIONS/1473. Presumption favouring updating construction.

### 1473. Presumption favouring updating construction.

It is presumed<sup>1</sup> to be the legislator's intention that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment<sup>2</sup> which is contained in any Act whose language is not fixed in time<sup>3</sup> corresponds to its legal meaning<sup>4</sup>, should apply a construction which continually updates its wording to allow for changes since the Act was initially framed (an updating construction)<sup>5</sup>.

Whether it is right in a particular case to apply an updating construction will depend on whether, on weighing the relevant interpretative factors<sup>6</sup>, the court finds there are no countervailing factors having greater weight<sup>7</sup>. The kinds of changes since an Act was passed that the court of construction may need to take into account include changes in the mischief which the enactment is intended to remedy<sup>8</sup>, changes in the surrounding law<sup>9</sup>, changes in social conditions<sup>10</sup>, developments in technology<sup>11</sup>, developments in medical science<sup>12</sup> and changes in the meaning of words<sup>13</sup>. If it seems that the meaning of an expression used in an Act may have changed materially since the Act was passed, evidence may be adduced to establish the original meaning<sup>14</sup>.

1 As to the nature of legislative presumptions see PARA 1469 ante.

2 As to the opposing constructions see PARA 1377 ante.

3 As to Acts whose language is fixed in time see PARA 1218 ante.

4 As to the legal meaning, which embodies the legislator's intention, see PARAS 1373-1374 ante.

5 An Act whose language may be treated as updated (see PARA 1218 ante) is to be treated as always speaking. This means that in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as continuing to operate as current law. Drafters produce their texts with this in mind: see eg *Peart v Stewart* [1983] 2 AC 109 at 117-118, [1983] 1 All ER 859 at 863, HL, per Lord Diplock ('I should... have reached the same conclusion upon the construction of the definition of 'superior court' in [the Contempt of Court Act 1981] s 19, even if it were

impossible to point to any existing court which complied with the description and one were driven to the conclusion that the draftsman was making anticipatory provision for possible new courts that might be subsequently created with the status of superior courts of record'). See also *Re St Mary's, Luton* [1968] P 47, [1966] 3 All ER 638, Court of Arches; *Dyson Holdings Ltd v Fox* [1976] QB 503, [1975] 3 All ER 1030, CA; *Watson v Lucas* [1980] 3 All ER 647, [1980] 1 WLR 1493, CA.

6 See PARA 1378 ante.

7 See eg *Steele Ford & Newton (a firm) v Crown Prosecution Service (No 2)* [1994] 1 AC 22, [1993] 2 All ER 769, HL, where the court traced the origin of the wording of the Supreme Court Act 1981 s 51(1) (which, until substituted by the Courts and Legal Services Act 1990 s 4(1), said that in civil proceedings the court 'shall have full power to determine by whom and to what extent the costs are to be paid') to the Supreme Court of Judicature Act 1890 s 5. The court held that the Supreme Court Act 1981 s 51(1) (as originally enacted) did not empower it in modern conditions to order costs to be paid out of central funds where this power was not expressly provided, since to do so would infringe the constitutional principle that no money can be taken out of the Consolidated Fund except under a distinct authorisation from Parliament itself: see PARA 1223 ante.

8 As to construction by reference to the mischief see PARA 1474 post.

9 Thus 'tax' in a pre-income tax enactment was held to include income tax: *Pole-Carew v Craddock* [1920] 3 KB 109, CA; *Gissing v Liverpool Corpn* [1935] Ch 1. Cf *Nugent-Head v Jacob (Inspector of Taxes)* [1948] AC 321 at 322, [1948] 1 All ER 414 at 415, HL, per Viscount Simon ('the words now in operation [in the Income Tax Acts] are largely borrowed from Acts of 1803, 1805 and 1806, at which dates the effect of marriage on the property of the wife was very different from what it is today'). See also *R v Manners* [1976] 2 All ER 96, CA; affd sub nom *DPP v Manners* [1978] AC 43, [1977] 1 All ER 316, HL (the question whether the North Thames Gas Board, set up under the Gas Act 1948 (repealed), was a 'public body' within the meaning of the Prevention of Corruption Acts 1889 to 1916 depended on what type of body was regarded in 1916 as a 'public body').

10 Where relevant social conditions have changed since the date of the enactment, what was then classed as a social mischief may have ceased to be so regarded. It is difficult for the court to apply an enactment so as to 'remedy' what is no longer generally regarded as a mischief. The consequence is an interpretation that minimises the coercive effect of the enactment and gives great weight to criteria such as the principle against doubtful penalisation: see PARA 1456 ante. See eg *Neale v Jennings* [1946] KB 238 at 242, [1946] 1 All ER 224 at 225, CA, per Scott LJ (whether parsonage house 'necessary' within meaning of the Pluralities Act 1838 'must be construed in relation to the particular circumstances of the present time'); *Chorley Borough Council v Barratt Developments (North West) Ltd* [1979] 3 All ER 634 (construction of prohibition on erecting 'back-to-back-houses intended to be used as dwellings for the working classes'); *Williams & Glyn's Bank Ltd v Boland* [1981] AC 487 at 502, [1980] 2 All ER 408 at 411, HL, per Lord Wilberforce ('The solution must be derived from a consideration in the light of current social conditions of the Land Registration Act 1925 and other property statutes'); *Bassam v Green* [1981] RTR 362 (1853 enactment making it an offence for a cab driver to 'demand or take more than the proper fare' held not to prohibit tipping in modern conditions); *Collins v British Airways Board* [1982] QB 734 at 743-744, [1982] 1 All ER 302 at 305-306, CA, per Lord Denning MR (where, though originally airlines kept register books in which all baggage was entered, this has been discontinued, 'the only solution that I can see is to strike out the words 'registered' and 'registration' wherever they occur'); *Marina Shipping Ltd v Laughton* [1982] QB 1127 at 1140-1141, [1982] 1 All ER 481 at 487, CA (changes in shipping practices led to the master no longer being treated as necessarily contracting on behalf of the owner); *Re Smith (a bankrupt), ex p Braintree District Council* [1990] 2 AC 215 at 238, [1989] 3 All ER 897 at 907, HL, per Lord Jauncey of Tullichettle ('not only has the legislative approach to individual bankruptcy altered since the mid-nineteenth century, but social views as to what conduct involves delinquency, as to punishment and as to the desirability of imprisonment have drastically changed'); *Massmould Holdings Ltd v Payne (Inspector of Taxes)* [1993] STC 62 (reference in a provision in the Finance Act 1972 which substantially reproduces a 1927 enactment to a business which a company 'was formed to acquire' held to cover an off the shelf company, even though such companies were unknown in 1927).

11 The nature of an Act whose language may be treated as updated requires the court to take account of changes in technology, and treat the statutory language as modified accordingly when this is needed to implement the legislative intention: see eg *Parkyn v Preist* (1881) 7 QBD 313 (steam tricycle held to be a 'locomotive'); *Ilford Corpn v Betterclean (Seven Kings) Ltd* [1965] 2 QB 222, [1965] 1 All ER 900, DC (whether coin-operated launderette 'closed for the serving of customers'); *Grant v South Western & County Properties Ltd* [1975] Ch 185, [1974] 2 All ER 465 (tape recording of telephone conversation a 'document') (approved in *Derby & Co Ltd v Weldon (No 9)* [1991] 2 All ER 901, [1991] 1 WLR 652); *A-G's Reference (No 5 of 1980)* [1980] 3 All ER 816, [1981] 1 WLR 88, CA (video cassette held to be a 'film or other record'); *Barker v Wilson* [1980] 2 All ER 81, [1980] 1 WLR 884, DC ('bankers' books' held to include microfilm); *R v South London Coroner, ex p Thompson* (1982) Times, 9 July (requirement that coroner should 'take a note' satisfied by use of tape recorder); *Hawkins v Harold A Russett Ltd* [1983] 1 All ER 215, [1983] RTR 406, DC (clip-on container held part of lorry for purpose of overhang restrictions); *Pierce v Bemis, The Lusitania* [1986] QB 384 at 394, [1986] 1 All ER 1011 at 1019 per Sheen J (on question whether wreck of *Lusitania* is a derelict 'it is now necessary to disregard some part of the language of [the Merchant Shipping Act 1894]'); *Derby & Co Ltd v Weldon (No 9)* supra (reference to

a 'document' includes computer database); *Lockheed-Arabia Corp v Owen* [1993] QB 806 at 814, [1993] 3 All ER 641 at 646, CA, per Mann LJ (reference to writing includes photocopy). If, however, changed technology produces something which is altogether beyond the scope of the original enactment, the court will not treat it as covered: see eg *Kingston Wharves Ltd v Reynolds Jamaica Mines Ltd* [1959] AC 187, PC (heavy tractors not 'carriages').

12 The developments which continually take place in medical science and techniques may require an updated construction of statutory language: see eg *R v Chan-Fook* [1994] 2 All ER 552 at 558-559, [1994] 1 WLR 689 at 695-696, CA, per Hobhouse LJ (nervous shock is now included in 'actual bodily harm', but the former term has subsequently itself become 'inaccurate and inappropriate').

13 Where an expression used in an Act has changed its original meaning, the Act may have to be construed as if there were substituted for that expression a term with a modern meaning corresponding to that original meaning: see *The Longford* (1889) 14 PD 34, CA. Eg, the old meaning of the word 'engine' was very wide. It derives from the Latin *ingenium*, and formerly meant any product of human ingenuity. Its modern meaning is much narrower, and denotes a mechanical contrivance with moving parts. The Offences against the Person Act 1861 s 31 makes it an offence to set or place 'any spring gun, mantrap, or other engine' calculated to endanger life. In *R v Munks* [1964] 1 QB 304 at 307, [1963] 3 All ER 757 at 759, CCA, Lord Parker CJ said '... as a matter of common sense, it is difficult to see how today at any rate one could aptly refer to these two electric wires as amounting to a spring gun, mantrap or other engine'.

14 *London and North Eastern Rly Co v Berriman* [1946] AC 278 at 312, [1946] 1 All ER 255 at 269-270, HL.

## UPDATE

### 1473 Presumption favouring updating construction

NOTE 7--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vi) Presumptions based on Nature of Legislation/B. MISCELLANEOUS PRESUMPTIONS/1474. Construction by reference to the mischief.

### 1474. Construction by reference to the mischief.

Parliament intends that an enactment shall remedy a particular mischief<sup>1</sup> and it is therefore presumed<sup>2</sup> that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment<sup>3</sup> corresponds to its legal meaning<sup>4</sup>, should find a construction which applies the remedy provided by it in such a way as to suppress that mischief. This doctrine originates in Heydon's Case<sup>5</sup> where the Barons of the Exchequer resolved<sup>6</sup> that for the sure and true interpretation of all statutes in general (be they penal or beneficial<sup>7</sup>, restrictive or enlarging of the common law)<sup>8</sup>, four things are to be discerned and considered:

- (1) what was the common law before the making of the Act<sup>9</sup>;
- (2) what was the mischief and defect for which the common law did not provide;
- (3) what remedy Parliament has resolved and appointed to cure the disease of the commonwealth; and
- (4) the true reason of the remedy<sup>10</sup>,

and then the office of all the judges is always to make such construction<sup>11</sup> as shall:

- (a) suppress the mischief and advance the remedy; and
- (b) suppress subtle inventions and evasions for the continuance of the mischief *pro privato commodo* (for private benefit)<sup>12</sup>; and
- (c) add force and life to the cure and remedy according to the true intent<sup>13</sup> of the makers of the Act *pro bono publico* (for the public good)<sup>14</sup>.

There is some presumption that an Act passed to amend the law<sup>15</sup> is directed against defects which came into notice about the time when the Act was passed<sup>16</sup>.

1 The term 'mischief', as used in statutory interpretation, has two different meanings. It may refer to a defect in the existing law (the legal mischief) or to a mischief 'on the ground', that is a factual condition that is causing concern (such as an increase in robbery). This may be called the social mischief. While a mischief on the ground may correspond to a defect in the law, this is not necessarily so; eg an increase in robbery may arise because the law is inadequate, or because an adequate law is inadequately enforced. Other social mischiefs may be beyond the reach of the law altogether.

2 As to the nature of legislative presumptions see PARA 1469 ante.

3 As to the opposing constructions see PARA 1377 ante.

4 As to the legal meaning, which embodies the legislator's intention, see PARAS 1373-1374 ante.

5 See *Heydon's Case* (1584) 3 Co Rep 7a. See also *Blackwell v England* (1857) 8 E & B 541.

6 The version in the text is slightly modified, embodying immaterial changes designed to assist reference and improve clarity.

7 As to the distinction between penal and non-penal enactments see PARA 1240 ante.

8 As to the position of the common law in relation to statute law see PARA 1438 ante.

9 References in the resolution in *Heydon's Case* (1584) 3 Co Rep 7a at 7b to the pre-Act law should now be taken to include statute law also: see PARA 1415 et seq ante.

10 See *Pardo v Bingham* (1869) 4 Ch App 735 at 740; *Freme v Clement* (1881) 18 ChD 499 at 508; *Mersey Steel and Iron Co v Naylor, Benzon & Co* (1882) 9 QBD 648 at 660, CA; *Lion Mutual Marine Insurance Assn Ltd v Tucker* (1883) 12 QBD 176 at 186, CA; *The Dunelm* (1884) 9 PD 164 at 171, CA; *Reigate RDC v Sutton District Water Co* (1908) 99 LT 168, DC (on appeal (1909) 78 LJ KB 315, CA).

11 As to the exclusive function of the courts in statutory interpretation see PARA 1369 et seq ante.

12 As to construction against evasion of an Act see PARA 1476 post.

13 As to legislative intention see PARA 1372 ante; and as to purposive construction see PARA 1475 post.

14 The resolution in *Heydon's Case* (1584) 3 Co Rep 7a at 7b has been of great importance in the development of statutory interpretation (for approving dicta see *Salkeld v Johnson* (1848) 2 Exch 256 at 273; *River Wear Comrs v Adamson* (1877) 2 App Cas 743 at 764, HL; *Re Mayfair Property Co, Bartlett v Mayfair Property Co* [1898] 2 Ch 28 at 35, CA) and continues to be cited (see *Hawkins v Gathercole* (1855) 6 De GM & G 1 at 21; *Hughes v Chester and Holyhead Rly Co* (1861) 1 Drew & Sm 524 (on appeal 3 De GF & J 352 at 362); *Phillips v Phillips* (1866) LR 1 P & D 169 at 173; *Bell v Holtby* (1873) LR 15 Eq 178 at 189; *River Wear Comrs v Adamson* supra at 765; *Freme v Clement* (1881) 18 ChD 499 at 508; *Caledonian Rly Co v North British Rly Co* (1881) 6 App Cas 114 at 122, HL; *Bradlaugh v Clarke* (1883) 8 App Cas 354 at 372, HL; *Conway v Wade* [1908] 2 KB 844 at 853, CA (revsd on another point [1909] AC 506, HL); *A-G for Northern Ireland v Gallagher* [1963] AC 349 at 366, [1961] 3 All ER 299 at 303, HL, per Lord Reid; *Gartside v IRC* [1968] AC 553 at 612, [1968] 1 All ER 121 at 131, HL, per Lord Reid; *Customs and Excise Comrs v Top Ten Promotions Ltd* [1969] 3 All ER 39 at 90, [1969] 1 WLR 1163 at 1171, HL, per Lord Upjohn; *Kennedy v Spratt* [1972] AC 83, [1971] 1 All ER 805, HL; *Cheng v Governor of Pentonville Prison* [1973] AC 931 at 952, [1973] 2 All ER 204 at 212, HL, per Lord Simon of Glaisdale (dissenting); *Applin v Race Relations Board* [1975] AC 259 at 286, [1974] 2 All ER 73 at 89, HL, per Lord Simon of Glaisdale; *Maunsell v Olins* [1975] AC 373, [1975] 1 All ER 16, HL; *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, [1975] 1 All ER 810, HL). However, like many judicial dicta on the subject, the resolution somewhat rashly attempts to be all-embracing in a few words. Nevertheless it marks the first and indeed only attempt by the judges fully to rationalise the important part of their function

which concerns statutory interpretation. Such brief summaries of a highly complex matter have their uses, but need to be approached with caution. There comes a point when any such compression necessitates the discarding of too many essential distinctions and qualifications for it to be safely relied on as a wholly accurate guide. For a fuller treatment see Bennion, *Statutory Interpretation* (2nd Edn, 1992) Pt XIX.

15 As to the distinction between declaratory and amending enactments see PARA 1236 ante.

16 *Shaw v Great Western Rly Co* [1894] 1 QB 373 at 382, DC; *North Central Wagon and Finance Co Ltd v Fifield* [1953] 1 All ER 1009 at 1011, [1953] 1 WLR 610 at 615, CA. However, even if those defects may be identified as the occasion for the remedy provided by the Act they will not necessarily define the limit of that remedy: see *Customs and Excise Comrs v Top Ten Promotions Ltd* [1969] 3 All ER 39 at 95, [1969] 1 WLR 1163 at 1178, HL, per Lord Wilberforce; *Central Asbestos Co Ltd v Dodd* [1973] AC 518, [1972] 2 All ER 1135, HL.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vi) Presumptions based on Nature of Legislation/B. MISCELLANEOUS PRESUMPTIONS/1475. Presumption favouring purposive construction.

### **1475. Presumption favouring purposive construction.**

It is presumed<sup>1</sup> that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment<sup>2</sup> corresponds to its legal meaning<sup>3</sup>, should find a construction which furthers every aspect of the legislative purpose (a purposive construction)<sup>4</sup>. It may thus be necessary to give the enactment, particularly where it is not grammatically ambiguous, a strained construction<sup>5</sup>. An important category of cases where a purposive and strained construction may be required is that where the potency of a defined term overrides the literal meaning of the definition<sup>6</sup>.

General judicial adoption of the term 'purposive construction' is recent, but the concept is not new<sup>7</sup>. As always in statutory interpretation, it is necessary, when considering the possibility of applying a purposive construction, to take account of any other applicable criteria as well<sup>8</sup>. A later Act in pari materia may have the effect of altering an Act's purpose, so far as concerns matters arising after the commencement of the later Act<sup>9</sup>.

1 As to the nature of legislative presumptions see PARA 1469 ante.

2 As to the opposing constructions see PARA 1377 ante.

3 As to the legal meaning, which embodies the legislator's intention, see PARAS 1373-1374 ante.

4 Consideration of the purpose of an enactment is always a legitimate part of the process of interpretation: see *Fothergill v Monarch Airlines Ltd* [1981] AC 251 at 272, [1980] 2 All ER 696 at 700, HL, per Lord Wilberforce. "Purpose" connotes an intention by some person to achieve a result desired by him': see *Sweet v Parsley* [1970] AC 132 at 165, [1969] 1 All ER 347 at 363-364, HL, per Lord Diplock. The purpose or object of Parliament in passing an Act (the legislative purpose) is to provide an appropriate remedy to serve as a cure for the mischief with which the Act deals: see PARA 1474 ante. The legislative purpose of a particular enactment contained in the Act is to be arrived at accordingly; in particular, it is deemed to be to remedy the mischief to which that enactment is directed. As to statements of purpose included in Acts see PARA 1266 ante.

5 A strained construction is a meaning other than the literal meaning or, where the literal meaning is ambiguous, a meaning other than one of the possible grammatically ambiguous meanings. As to the literal meaning see PARA 1470 ante. When judges speak of a purposive construction, they usually mean to refer to what may be called a purposive and strained construction. This is because if a construction corresponds to the literal meaning there is little point in adding the further description involved in calling it 'purposive' (though considering the purpose may of course help in deciding between the meanings of a grammatically ambiguous enactment). Thus judges have referred to 'the power of the courts to disregard the literal meaning of an Act and to give it a purposive construction' (*A-G of New Zealand v Ortiz* [1982] QB 349 at 361, [1982] 3 All ER 432 at 442 per Staughton J; revsd on appeal [1984] AC 1, [1982] 3 All ER 432, CA; [1984] AC 1, [1983] 2 All ER 93, HL).

and 'competing approaches to the task of statutory construction; the literal and the purposive approach' (*Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1971] AC 850 at 879, [1970] 2 All ER 871 at 891, HL, per Lord Diplock). See also *Jones v Wrotham Park Settled Estates* [1980] AC 74 at 105, [1979] 1 All ER 286 at 289, HL, per Lord Diplock ('I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act'). A construction where the purposive factor was allowed too much weight in departing from the literal meaning was referred to as an 'over-purposive' construction in *R v Poplar Coroner, ex p Thomas* [1993] QB 610 at 629, [1993] 2 All ER 381 at 387, CA, per Dillon LJ. For examples of purposive and strained construction see *Liversidge v Anderson* [1942] AC 206, [1941] 3 All ER 338, HL; *Kammins Ballroom Ltd v Zenith Investments (Torquay) Ltd* supra; *Kaye v Tyrrell* (1984) Times, 9 July; *Re D (a minor)* [1987] AC 317; sub nom *D (a minor) v Berkshire County Council* [1987] 1 All ER 20, HL; *X Ltd v Morgan-Grampian (Publishers) Ltd* [1991] 1 AC 1 at 55, [1990] 2 All ER 1 at 17, HL. In *A-G v Hislop* [1991] 1 QB 514, [1991] 1 All ER 911, CA, it was held that the Administration of Justice Act 1960 s 13(2) (as amended) (appeal in cases of contempt of court), should be read as if the words 'for committal or attachment' were 'not there at all and are mere surplusage', because otherwise a company could not appeal under the Act, which would be 'defeating the plain legislative purpose': see *A-G v Hislop* supra at 523-524 and 917-918 per Parker LJ.

6 See PARA 1389 ante.

7 The need for purposive construction of statutes has been recognised since the seventeenth century: see *Stock v Frank Jones (Tipton) Ltd* [1978] ICR 347 at 351, [1978] 1 All ER 948 at 951, HL, per Viscount Dilhorne.

8 See PARA 1378 ante. In *A-G of New Zealand v Ortiz* [1982] QB 349, [1982] 3 All ER 432 it was held at first instance that the phrase 'shall be forfeited' in the Historic Articles Act 1962 (New Zealand) s 12(2) was ambiguous, and that a purposive construction should be applied to decide whether forfeiture was automatic or depended upon seizure of the historic article in question. The decision was overruled on appeal (see *A-G of New Zealand v Ortiz* [1984] AC 1, [1982] 3 All ER 432, CA; affd [1984] AC 1, [1983] 2 All ER 93, HL) because, though correct as far as it went, it failed to take into account a further (and overriding) interpretative criterion, ie the rule of international law which limits the extraterritorial effect of legislation relating to property rights.

9 As to Acts in pari materia see PARA 1220 ante. For an example see *R v Hammersmith and Fulham London Borough Council, ex p Beddowes* [1987] QB 1050 at 1065, [1987] 1 All ER 369 at 379-380, CA, per Fox LJ ('Historically, local authority housing has been rented. But a substantial inroad upon that was made by the Housing Act 1980 Pt I [(ss 1-27); now repealed and replaced by the Housing Act 1985 Pt V (ss 118-188) (as amended)], which gave municipal tenants the right to purchase their dwellings. In the circumstances it does not seem to me that a policy which is designed to produce good accommodation for owner-occupiers is now any less within the purposes of the Housing Acts than the provision of rented housing...').

## UPDATE

### 1475 Presumption favouring purposive interpretation

NOTE 4--Where an enactment grants a statutory right but fails to determine its limitations, the court must determine that right by reference to the purpose for which it was granted: *Oliver Ashworth (Holdings) Ltd v Ballard (Kent) Ltd* [1999] 2 All ER 791, CA. See *R (on the application of the Crown Prosecution Service) v Bow Street Magistrates' Court (James and others, interested parties)* [2006] EWHC 1763 (Admin), [2006] 4 All ER 1342, DC (interpretative powers of court, exercised to correct obvious drafting mistake, inflicted no detriment or greater detriment on parties concerned).

NOTE 8--Over-precise syntactical constructions are inappropriate; it is necessary to rely on the natural meaning of the words used, guided by a consideration of the purpose of the statute: see *BP Exploration Operating Co Ltd v Chevron Shipping Co; BP Exploration Operating Co Ltd v Chevron Tankers (Bermuda) Ltd; BP Exploration Operating Co Ltd v Chevron Transport Corpn* [2001] UKHL 50, [2003] 1 AC 197 (meaning of 'owner' in Harbours, Docks and Piers Clauses Act 1847 s 74); and PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 754.



Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vi) Presumptions based on Nature of Legislation/B. MISCELLANEOUS PRESUMPTIONS/1476. Presumption favouring construction against evasion.

#### **1476. Presumption favouring construction against evasion.**

It is presumed<sup>1</sup> that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment<sup>2</sup> corresponds to its legal meaning<sup>3</sup>, should find against a construction which circumvents or otherwise evades the object of the enactment<sup>4</sup>. Where an enactment prohibits the doing of a thing, the prohibition is taken to extend to the doing of it by indirect or roundabout means, even though not expressly referred to<sup>5</sup>. The court will infer an intention by Parliament (1) to treat as evasion of an Act the deferring of liability under it in ways not envisaged by the Act<sup>6</sup>; and (2) that evasion of an Act should not be countenanced where the method used is constant repetition of acts which taken singly are unexceptionable, but which considered together cumulatively effect an evasion of the purpose of the Act<sup>7</sup>. In order that the purpose of an Act may be achieved, it is necessary that any legal proceedings connected with its enforcement and administration should be facilitated and not hindered. Accordingly the courts frown on attempts to construe an enactment in such a way as to frustrate or stultify legal proceedings under the Act<sup>8</sup>. The presumption against evasion is not limited to cases of deliberate or obvious evasion, but extends to any way by which an Act's integrity of purpose may be undermined, even innocently or unwittingly<sup>9</sup>.

1 As to the nature of legislative presumptions see PARA 1469 ante.

2 As to the opposing constructions see PARA 1377 ante.

3 As to the legal meaning, which embodies the legislator's intention, see PARAS 1373-1374 ante.

4 As to the object of an enactment see PARA 1475 ante. The presumption that evasion of an Act is not to be allowed is one of the numerous varieties of consequential construction: see PARA 1471 ante. In *Heydon's Case* (1584) 3 Co Rep 7a at 7b (see PARA 1474 ante) the judges enunciated the principle that 'the office of all the Judges is always to make such construction as shall... suppress subtle inventions and evasions for continuance of the mischief'. For examples of the application of this presumption see *Dutton v Atkins* (1871) LR 6 QB 373 (evasion of vaccination requirement); *London School Board v Wood* (1885) 15 QBD 415 (parent did not satisfy requirement to 'cause the child to attend school' where he sent him to school without the school fees then payable); *Patterson v Redpath Bros Ltd* [1979] 2 All ER 108 at 111, [1979] 1 WLR 553 at 557, DC, per Lord Widgery CJ ('it cannot have been the intention of the legislature to allow the provisions of the regulations to be circumvented merely by packing goods into a larger receptacle'); *London Borough of Hackney v Ezedinma* [1981] 3 All ER 438 at 442, DC, per Griffiths LJ ('unless [household] includes a person lodging in a single room, it means that lodging houses would be taken out of the code'); *Lambert v Ealing London Borough Council* [1982] 2 All ER 394 at 400, [1982] 1 WLR 550 at 558, CA (court declined to 'drive a coach and horses' through Housing Act); *R v Ealing London Borough Council, ex p Sidhu* (1982) 80 LGR 534 (court declined to 'water down' Housing Act); *R v Oldham Metropolitan Borough Council, ex p Garlick* [1993] AC 509 at 519-520; sub nom *Garlick v Oldham Metropolitan Borough Council* [1993] 2 All ER 65 at 71-72, HL, per Lord Griffiths (housing application merely a device to get around unchallenged finding of intentional homelessness).

5 Where Parliament wishes to prohibit the doing of any act, it tends to concentrate in the statutory wording on the obvious and direct ways of doing it; yet if the intention is to be achieved, the prohibition must be taken to extend to indirect methods of achieving the same object even though these are not expressly mentioned. See eg *Walker v Walker* [1983] Fam 68 at 74, [1983] 2 All ER 909 at 912, CA; *Street v Mountford* [1985] AC 809 at 825, [1985] 2 All ER 289 at 299, HL.

6 Thus if an Act imposes a liability falling at a certain time, it is an evasion of the Act to procure a postponement of the liability by artificial means not contemplated by the Act: see eg *Furniss (Inspector of Taxes) v Dawson* [1984] AC 474 at 518, [1984] 1 All ER 530 at 536, HL.

7 What substantially amounts to evasion of an enactment can sometimes be effected by constant repetition of acts which in themselves are lawful. See eg *Macbeth v Ashley* (1874) LR 2 Sc & Div 352 at 357; *A-G v Harris* [1961] 1 QB 74, [1960] 3 All ER 207, CA. Cf *Smale v Burr* (1872) LR 8 CP 64.

8 As an aspect of the court's duty to implement legislation (see PARA 1347 ante), it will not allow legal proceedings under an Act to be stultified or obstructed by inappropriate constructions: see eg *The Longford* (1889) 14 PD 34, CA; *Buchanan-Michaelson v Rubinstein* [1965] Ch 258, [1964] 3 All ER 850 per Pennycuik J (on appeal [1965] 1 All ER 599, [1965] 1 WLR 390, CA); *R v Aubrey-Fletcher, ex p Ross-Munro* [1968] 1 QB 620 at 627, [1968] 1 All ER 99 at 101, DC, per Lord Parker CJ; *Rochdale Metropolitan Borough Council v FMC (Meat) Ltd* [1980] 2 All ER 303, [1980] 1 WLR 461, DC; *R v Bloxham* [1981] 2 All ER 647 at 649, [1981] 1 WLR 859 at 862, CA per Kilner Brown J (on appeal [1983] 1 AC 109, [1982] 1 All ER 582, HL); *R v Holt* [1981] 2 All ER 854 at 856-857, [1981] 1 WLR 1000 at 1003, CA, per Lawson J; *Derby & Co Ltd v Weldon (Nos 3 and 4)* [1990] Ch 65 at 76; sub nom *Derby & Co Ltd v Weldon (No 2)* [1989] 1 All ER 1002 at 1006-1007, CA; *R v Secretary of State for the Home Department, ex p Muboyayi* [1992] QB 244 at 257, [1991] 4 All ER 72 at 81, CA.

9 An Act has its integrity, which the courts seek to uphold. They turn against a construction which would enable persons to undermine this integrity by using the scheme of the Act in unintended ways. See eg *Stile Hall Properties Ltd v Gooch* [1979] 3 All ER 848 at 851-852, [1980] 1 WLR 62 at 65, CA, per Edmund Davies LJ; *Meadows v Clerical, Medical and General Life Assurance Society* [1981] Ch 70, [1980] 1 All ER 454.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vi) Presumptions based on Nature of Legislation/C. PRESUMPTION AGAINST ABSURDITY/1477. Nature of presumption against absurdity.

### **C. PRESUMPTION AGAINST ABSURDITY**

#### **1477. Nature of presumption against absurdity.**

It is presumed<sup>1</sup> that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment<sup>2</sup> corresponds to its legal meaning<sup>3</sup>, should find against a construction which produces an absurd result, since this is unlikely to have been intended by Parliament. Here 'absurd' means contrary to sense and reason<sup>4</sup>; so in this context the term 'absurd' is used to include a result which is unworkable or impracticable<sup>5</sup>, inconvenient<sup>6</sup>, anomalous or illogical<sup>7</sup>, futile or pointless<sup>8</sup>, artificial<sup>9</sup>, or productive of a disproportionate counter-mischief.

1 As to the nature of legislative presumptions see PARA 1469 ante. The presumption against absurdity is an aspect of the general presumption favouring consequential construction: see PARA 1471 ante.

2 As to the opposing constructions see PARA 1377 ante.

3 As to the legal meaning, which embodies the legislator's intention, see PARAS 1373-1374 ante.

4 The presumption against absurdity is 'what Lord Wensleydale used to call the golden rule'; ie 'that we are to take the whole statute together, and construe it all together giving the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the court that the intention could not have been to use them in their ordinary signification': *River Wear Comrs v Adamson* (1877) 2 App Cas 743 at 764, HL, per Lord Blackburn. This was said shortly after a case on the Highway Act 1835 where it was held that unless a strained construction were applied the court would in effect be holding that the legislature had made an 'absurd mistake': *Williams v Evans* (1876) 1 Ex D 277 at 282 per Grove J. In the same case Field J said (at 284): 'No doubt it is a maxim to be followed in the interpretation of statutes, that the ordinary grammatical construction is to be adopted; but when this leads to a manifest absurdity, a construction not strictly grammatical is allowed, if this will lead to a reasonable conclusion as to the intention of the legislature'. In a modern case, on the question of the date from which interest should run on a judgment debt, one of the opposing constructions was preferred above the other 'to avoid absurd results': *Erven Warnink BV v J Townend & Sons (Hull) Ltd (No 2)* [1982] 3 All ER 312 at 320, [1982] RPC 511 at 520, CA.

5 See PARA 1478 post.

6 See PARA 1479 post.

7 See PARA 1480 post.

8 See PARA 1481 post.

9 See PARA 1482 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vi) Presumptions based on Nature of Legislation/C. PRESUMPTION AGAINST ABSURDITY/1478. Presumption against unworkable or impracticable result.

### **1478. Presumption against unworkable or impracticable result.**

It is presumed<sup>1</sup> that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment<sup>2</sup> corresponds to its legal meaning<sup>3</sup>, should find against a construction which produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament<sup>4</sup>.

1 As to the nature of legislative presumptions see PARA 1469 ante; and as to the general presumption against absurdity see PARA 1477 ante.

2 As to the opposing constructions see PARA 1377 ante.

3 As to the legal meaning, which embodies the legislator's intention, see PARAS 1373-1374 ante.

4 See eg *Delaney v Staples* [1992] 1 AC 687 at 696, [1992] 1 All ER 944 at 950-951, HL per Lord Browne-Wilkinson ('I find that the provisions of the [Wages Act 1986] cannot be made to work if payments in lieu are included in the meaning of wages'). See also *Jones v Conway Water Supply* [1893] 2 Ch 603; *Watkinson v Hollington* [1944] KB 16, [1943] 2 All ER 573, CA; *Richard Thomas and Baldwins Ltd v Cummings* [1955] AC 321 at 334, [1955] 1 All ER 285 at 290, HL, per Lord Reid ('The fact that the interpretation for which the respondent contends would lead to so unreasonable a result is, in my opinion, sufficient to require the more limited meaning of 'in motion' to be adopted unless there is some very strong objection to it, and none was suggested'); *Gill v Donald Humberstone & Co Ltd* [1963] 3 All ER 180 at 183, [1963] 1 WLR 929 at 934, HL, per Lord Reid ('If the language is capable of more than one interpretation, we ought to discard the more natural meaning if it leads to an unreasonable result, and adopt that interpretation which leads to a reasonably practicable result'); *Federal Steam Navigation Co Ltd v Department of Trade and Industry* [1974] 2 All ER 97 at 100, [1974] 1 WLR 505 at 509, HL, per Lord Reid (cases where it has properly been held that one word can be struck out of a statute and another substituted include the case where without such substitution the provision would be 'unworkable'); *SJ Grange Ltd v Customs and Excise Comrs* [1979] 2 All ER 91 at 101, [1979] 1 WLR 239 at 242, CA, per Lord Denning MR; *Wills v Bowley* [1983] 1 AC 57 at 102, [1982] 2 All ER 654 at 681, HL, per Lord Bridge; *Re Amin* [1983] 2 AC 818 at 828, [1983] 2 All ER 864 at 868, HL; *Sheffield City Council v Yorkshire Water Services Ltd* [1991] 2 All ER 280 at 291-292, [1991] 1 WLR 58 at 71.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vi) Presumptions based on Nature of Legislation/C. PRESUMPTION AGAINST ABSURDITY/1479. Presumption against inconvenient result.

### **1479. Presumption against inconvenient result.**

It is presumed<sup>1</sup> that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment<sup>2</sup> corresponds to its

legal meaning<sup>3</sup>, should find against a construction that causes unjustifiable inconvenience to persons who are subject to the enactment, since such inconvenience is unlikely to have been intended by Parliament<sup>4</sup>. The presumption against inconvenience will in particular be applied to avoid unnecessary technicality<sup>5</sup>, business inconvenience<sup>6</sup>, inconvenience to taxpayers<sup>7</sup> or inconvenience in legal proceedings<sup>8</sup>. Where each of the constructions contended for involves some measure of inconvenience then, in so far as the court uses inconvenience as a test<sup>9</sup>, it has to balance the effect of each construction and determine which inconvenience is greater<sup>10</sup>.

1 As to the nature of legislative presumptions see PARA 1469 ante; and as to the general presumption against absurdity see PARA 1477 ante.

2 As to the opposing constructions see PARA 1377 ante.

3 As to the legal meaning, which embodies the legislator's intention, see PARAS 1373-1374 ante.

4 The court should reject an alternative construction 'which will introduce uncertainty, friction or confusion into the working of the system': *Shannon Realties v Ville de St Michael* [1924] AC 185 at 192, HL, per Lord Shaw. See also *Income Tax Comrs for General Purposes for City of London v Gibbs* [1942] AC 402 at 414, HL; *Jones v DPP* [1962] AC 635 at 662, [1962] 1 All ER 569 at 574, HL. Whereas the court may find itself compelled to reach a strained construction to avoid unworkable consequences (see PARA 1478 ante), it is unlikely to reach a strained construction merely to avoid inconvenience.

5 Modern courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfilment of the purposes of the legislation. See eg *Lawrence Chemical Co Ltd v Rubenstein* [1982] 1 All ER 653 at 658, [1982] 1 WLR 284 at 291, CA, per Arnold P.

6 The courts are alert to avoid any inconvenience to business enterprise which is not essential to the operation of an Act, and which may in addition have adverse economic consequences: see eg *Cutler v Wandsworth Stadium Ltd* [1949] AC 398 at 417, [1949] 1 All ER 544 at 553-554, HL, per Lord Reid; *Poole Stadium Ltd v Squires* [1982] 1 All ER 404 at 408, [1982] 1 WLR 235 at 242, DC, per Phillips J; and see *Fine Fare Ltd v Aberdare UDC* [1965] 2 QB 39, [1965] 1 All ER 679, DC.

7 The courts are ready to ensure that, even though in the public interest proper taxes must be paid, the taxpayer is not unreasonably harassed by the tax authorities: see eg *Hallamshire Industrial Finance Trust Ltd v IRC* [1979] 2 All ER 433 at 437, [1979] 1 WLR 620 at 625 per Browne-Wilkinson J; *IRC v Helen Slater Charitable Trust Ltd* [1982] Ch 49 at 56, [1981] 3 All ER 98 at 101-102, CA, per Oliver LJ.

8 Courts seek to avoid unnecessary expense or other inconvenience to litigants or officers of the court. Thus a construction requiring a litigant to pursue two different courses of appeal against decisions made on a single complaint will if possible be avoided: see *Allen v Allen* [1985] Fam 8, [1985] 1 All ER 93. See also *R v Smith* [1910] 1 KB 17 at 21; *Marsland v Taggart* [1928] 2 KB 447 at 450 per Shearman J; *Re Milton Hindle Ltd* [1963] 3 All ER 161 at 163, [1963] 1 WLR 1032 at 1034 per Pennycuik J; *W v Nottinghamshire County Council* [1982] Fam 53 at 62, [1982] 1 All ER 1 at 7-8, CA, per Ormrod LJ. The law's delays are a notorious defect, and the courts regard them as an inconvenience to be avoided if possible, so a construction that tends to draw out proceedings is frowned on: see eg *R v Crown Court at Sheffield, ex p Brownlow* [1980] QB 530 at 544-545, [1980] 2 All ER 444 at 455, CA, per Shaw LJ; *National Westminster Bank plc v Powney* [1991] Ch 339 at 361, [1990] 2 All ER 416 at 431, CA.

9 There may well be other interpretative factors to be taken into account also: see PARA 1378 ante.

10 See eg *Pascoe v Nicholson* [1981] 2 All ER 769, [1981] 1 WLR 1061, HL (inconvenience either to police or suspect in breathalyser case); *Dillon v R* [1982] AC 484 at 487, [1982] 1 All ER 1017 at 1019-1020, PC, per Lord Fraser of Tulleybelton (inconvenience either to prosecution or defence in adducing evidence).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vi) Presumptions based on Nature of Legislation/C. PRESUMPTION AGAINST ABSURDITY/1480. Presumption against anomalous or illogical result.

#### **1480. Presumption against anomalous or illogical result.**

It is presumed<sup>1</sup> that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment<sup>2</sup> corresponds to its legal meaning<sup>3</sup>, should find against a construction that creates an anomaly or otherwise produces an irrational or illogical result<sup>4</sup>. The presumption may be applicable where on one construction a benefit is not available in like cases<sup>5</sup>, or a detriment is not imposed in like cases<sup>6</sup>, or the decision would turn on an immaterial distinction<sup>7</sup> or an anomaly would be created in legal doctrine<sup>8</sup>. Where each of the constructions contended for involves some anomaly then, in so far as the court uses anomaly as a test<sup>9</sup>, it has to balance the effect of each construction and determine which anomaly is greater<sup>10</sup>. It may be possible to avoid the anomaly by the exercise of a discretion<sup>11</sup>. It may be, however, that the anomaly is clearly intended, when effect must be given to the intention<sup>12</sup>. The court will pay little attention to a proclaimed anomaly if it is purely hypothetical, and unlikely to arise in practice<sup>13</sup>.

1 As to the nature of legislative presumptions see PARA 1469 ante; and as to the general presumption against absurdity see PARA 1477 ante.

2 As to the opposing constructions see PARA 1377 ante.

3 As to the legal meaning, which embodies the legislator's intention, see PARAS 1373-1374 ante.

4 See *Stock v Frank Jones (Tipton) Ltd* [1978] ICR 347, [1978] 1 All ER 948, HL, per Lord Simon of Glaisdale; *Canterbury City Council v Colley* [1993] AC 401 at 406, [1993] 1 All ER 591 at 595-596, HL, per Lord Oliver of Aylmerton. This is an aspect of the principle that Parliament is taken to expect its Acts to be applied with common sense: see PARA 1392 ante.

5 See eg *Davidson v Hill* [1901] 2 KB 606 at 614; *Dunn v Blackdown Properties Ltd* [1961] Ch 433 at 441, [1961] 2 All ER 62 at 67; *Gordon v Cradock* [1964] 1 QB 503 at 506, [1963] 2 All ER 121 at 122, CA; *Tolley v Morris* [1979] 2 All ER 561 at 569-571, [1979] 1 WLR 592 at 601-603, HL, per Lord Diplock; *Customs and Excise Comrs v Hedon Alpha Ltd* [1981] QB 818, [1981] 2 All ER 697, CA; *McCormick v Horsepower Ltd* [1981] ICR 535 at 540-541, [1981] 2 All ER 746 at 750, CA, per O' Connor LJ; *Alex Lawrie Factors Ltd v Modern Injection Moulds Ltd* [1981] 3 All ER 658 at 663 per Drake J; *Agromet Motoimport Ltd v Maulden Engineering Co (Beds) Ltd* [1985] 2 All ER 436, [1985] 1 WLR 762; *Coltman v Bibby Tankers Ltd, The Derbyshire* [1988] AC 276, [1987] 3 All ER 1068, HL.

6 See eg *Din v National Assistance Board* [1967] 2 QB 213 at 218, [1967] 1 All ER 750 at 752-753, DC, per Salmon LJ; *Mills v Cooper* [1967] 2 QB 459 at 467, [1967] 2 All ER 100 at 103, DC, per Lord Parker CJ; *R v Arthur* [1968] 1 QB 810 at 813 per Howard J; *T & E Homes Ltd v Robinson (Inspector of Taxes)* [1979] 2 All ER 522 at 528, [1979] 1 WLR 452 at 459, CA, per Templeman LJ; *R v Denton* [1982] 1 All ER 65, [1981] 1 WLR 1446, CA; *A-G's Reference (No 1 of 1981)* [1982] QB 848 at 856, [1982] 2 All ER 417 at 422, CA, per Lord Lane CJ.

7 See eg *Bracey v Read* [1963] Ch 88 at 93, [1962] 3 All ER 472 at 476; *Bowers v Gloucester Corpn* [1963] 1 QB 881 at 887, [1963] 1 All ER 437 at 439, DC, per Lord Parker CJ; *Rank Xerox Ltd v Lane (Inspector of Taxes)* [1981] AC 629 at 639, [1979] 3 All ER 657 at 659, HL, per Lord Wilberforce; *R v Islington North Juvenile Court, ex p Daley* [1983] 1 AC 347; sub nom *Re Daley* [1982] 2 All ER 974, HL; *Capcount Trading v Evans (Inspector of Taxes)* [1993] 2 All ER 125 at 143, CA, per Staughton LJ.

8 See eg *Re Lockwood, Atherton v Brooke* [1958] Ch 231, [1957] 3 All ER 520 (distant relatives preferred to nearer on intestacy); *R v Minister of Agriculture and Fisheries, ex p Graham* [1955] 2 QB 140 at 168, [1955] 2 All ER 129 at 139, CA (officer of sub-committee could hear representations while officer of main committee could not); *R v Baker* [1962] 2 QB 530, [1961] 3 All ER 703, CCA (person arrested on suspicion of offence liable to higher penalty than if he had committed the offence). See also *R v Ettridge* [1909] 2 KB 24, CCA; *Re Cohen (a bankrupt)* [1961] Ch 246 at 257, [1961] 1 All ER 646 at 650, CA, per Lord Evershed MR; *Harrison-Broadley v Smith* [1964] 1 All ER 867 at 872, [1964] 1 WLR 456 at 464, CA, per Harman LJ; *W & M Wood (Haulage) Ltd v Redpath* [1967] 2 QB 520 at 526, [1966] 3 All ER 556 at 558 per Ashworth J; *R v Kray* [1970] 1 QB 125 at 130, [1969] 3 All ER 941 at 944, CA, per Widgery LJ; *DPP v Schildkamp* [1971] AC 1 at 12, [1969] 3 All ER 1640 at 1643, HL, per Lord Hodson; *R v Governor of Holloway Prison, ex p Giambi* [1982] 1 All ER 434, [1982] 1 WLR 535; *Aly v Aly* (1983) Times, 27 December, CA, per Eveleigh LJ.

9 There may well be other interpretative factors to be taken into account also: see PARA 1378 ante.

10 It may happen that each of the opposing constructions produces an anomalous consequence. This will lessen the case for a strained construction. If however it is a matter of choosing between alternative

grammatical constructions (ie it is a case of grammatical ambiguity), the anomalies incident to each need to be weighed against each other: see eg *Pearson v IRC* [1981] AC 753 at 775, [1980] 2 All ER 479 at 486-487, HL, per Viscount Dilhorne; *Suedeclub Co Ltd v Occasions Textiles Ltd* [1981] 3 All ER 671 at 673, [1981] 1 WLR 1245 at 1247; *International Military Services Ltd v Capital and Counties plc* [1982] 2 All ER 20 at 30, [1982] 1 WLR 575 at 586-587.

11 See eg *Re a Debtor (No 13 of 1964), ex p Official Receiver v The Debtor* [1979] 3 All ER 15, [1980] 1 WLR 263, DC.

12 See eg *Re Duckett* [1964] Ch 398, [1964] 1 All ER 19, CA (on a teacher's bankruptcy her allowances and gratuity were available to the creditors, but not her pension contributions); *R v Dooley* [1964] 1 All ER 178, [1964] 1 WLR 648 (inexplicably different procedures where constable and medical practitioner required taking of blood or urine test); *Macarthy's Ltd v Smith* [1979] ICR at 785 at 797, [1979] 3 All ER 325 at 335, CA (female employee could compare her conditions with those of previous male employee on matters not related to pay but not on pay itself); *R v Cambridge Justices, ex p Fraser* [1985] 1 All ER 667, [1984] 1 WLR 1391, DC (where defendant was charged before examining justices with offence triable on indictment only they could not, under the Magistrates' Courts Act 1980 s 6(1), try a lesser offence summarily even though they could if the lesser offence had been originally charged (s 6 (as amended) is prospectively substituted by the Criminal Justice and Public Order Act 1994 s 44(1), (2), Sch 4 Pt I as from a day to be appointed)); *Canterbury City Council v Colley* [1993] AC 401, [1993] 1 All ER 591, HL (assessor under the Town and Country Planning Act 1971 s 164 (repealed; see now the Town and Country Planning Act 1990 s 107 (as amended)) of compensation for revocation of planning permission required to assume that very permission would be granted).

13 See eg *Harman v Secretary of State for the Home Department* [1983] 1 AC 280 at 305; sub nom *Home Office v Harman* [1982] 1 All ER 532 at 538, HL, per Lord Diplock.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vi) Presumptions based on Nature of Legislation/C. PRESUMPTION AGAINST ABSURDITY/1481. Presumption against futile or pointless result.

### **1481. Presumption against futile or pointless result.**

It is presumed<sup>1</sup> that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment<sup>2</sup> corresponds to its legal meaning<sup>3</sup>, should find against a construction that produces a futile or pointless result, since this is unlikely to have been intended by Parliament<sup>4</sup>. A construction may be futile because it imposes an unnecessary legal duty<sup>5</sup>, duplicates an existing legal duty<sup>6</sup>, imposes a detriment that is easily avoidable<sup>7</sup> or requires or allows pointless legal proceedings<sup>8</sup>.

1 As to the nature of legislative presumptions see PARA 1469 ante; and as to the general presumption against absurdity see PARA 1477 ante.

2 As to the opposing constructions see PARA 1377 ante.

3 As to the legal meaning, which embodies the legislator's intention, see PARAS 1373-1374 ante.

4 'The law never compels a person to do that which is useless and unnecessary': *Lickiss v Milestone Motor Policies at Lloyd's* [1966] 2 All ER 972 at 975; sub nom *Barrett Bros (Taxis) Ltd v Davies (Lickiss and Milestone Motor Policies at Lloyd's, third parties)* [1966] 1 WLR 1334 at 1339, CA, per Lord Denning MR. As to the de minimis principle see PARA 1441 ante.

5 See eg *R v Saville* [1981] QB 12 at 17, [1980] 1 All ER 861 at 864, CA, per Lord Widgery CJ; *Aziz v Knightsbridge Gaming and Catering Services and Supplies Ltd* (1982) Times, 6 July.

6 See eg *Re Ternan* (1864) 33 LJMC 201.

7 See eg *Jones v Conway and Colwyn Bay Joint Water Supply Board* [1893] 2 Ch 603 at 608 per North J; *Bishop v Deakin* [1936] 1 Ch 409 at 414 per Clauson J.

8 See eg *Kammins Ballrooms Ltd v Zenith Investments (Torquay) Ltd* [1971] AC 850 at 860, [1970] 2 All ER 871 at 876, HL, per Lord Reid; *Marshall v Cottingham* [1982] Ch 82 at 87, [1981] 3 All ER 8 at 11 per Megarry V-C; *Sandwell Metropolitan Borough Council v Bujok* [1990] 3 All ER 385 at 390, [1990] 1 WLR 1350 at 1356, HL, per Lord Griffiths.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vi) Presumptions based on Nature of Legislation/C. PRESUMPTION AGAINST ABSURDITY/1482. Presumption against artificial result.

### **1482. Presumption against artificial result.**

It is presumed<sup>1</sup> that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment<sup>2</sup> corresponds to its legal meaning<sup>3</sup>, should find against a construction that produces an artificial result, since this is unlikely to have been intended by Parliament<sup>4</sup>.

1 As to the nature of legislative presumptions see PARA 1469 ante; and as to the general presumption against absurdity see PARA 1477 ante.

2 As to the opposing constructions see PARA 1377 ante.

3 As to the legal meaning, which embodies the legislator's intention, see PARAS 1373-1374 ante.

4 The law can deem anything to be the case, however unreal, and frequently employs fictions. The law brings itself into disrepute, however, if it dignifies with legal significance a wholly artificial hypothesis: see *R v Cash* [1985] QB 801 at 806, [1985] 2 All ER 128 at 132, CA, per Lord Lane CJ ('We do not believe that this tortuous process, leading in some cases to such an artificial verdict, could have been the intention of Parliament'). See also *MacLennan v MacLennan* 1958 SC 105 (if donor under AID (artificial insemination by a donor) chanced to die before the insemination, the wife, if the insemination were treated as statutory adultery (as contended), would be guilty of constructive necrophilia; as to the current legal status of artificial insemination see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 101 (children born between 4 April 1988 and 31 July 1991), 102 et seq (parentage under the Human Fertilisation and Embryology Act 1990)); *Re New Timbiqui Gold Mines Ltd* [1961] Ch 319 at 326, [1961] 1 All ER 865 at 868 per Buckley J ('make-believe' in companies legislation should not be carried further than absolutely necessary); *Warwick RDC v Miller-Mead* [1962] Ch 441, [1962] 1 All ER 212, CA (local authority passed a resolution authorising proceedings *after* writ had been issued in its name); *Marshall (Inspector of Taxes) v Kerr* [1995] 1 AC 148 at 157, [1994] 3 All ER 106 at 112, HL, per Lord Templeman (to apply deeming provisions in tax legislation in the way contended for would give success to 'a narrow and technical argument in order to produce a result which Parliament could not have intended and to favour a minority of United Kingdom residents to the detriment of the majority').

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vii) Linguistic Canons of Construction/1483. Nature of linguistic canons.

### **(vii) Linguistic Canons of Construction**

#### **1483. Nature of linguistic canons.**

The linguistic canons of construction reflect the nature and use of language generally, and do not depend on the legislative character of the enactment in question, nor indeed on its quality as a legal pronouncement. They are not confined to statutes, or even to the field of law, being

based on the rules of logic, grammar, syntax and punctuation; and the use of language as a medium of communication generally. They are used to arrive at the literal meaning of an enactment<sup>1</sup>. When judges say, as they sometimes do<sup>2</sup>, that the rules of statutory interpretation do not materially differ from those applicable to the interpretation of documents generally, it is these linguistic canons they have in mind. The other interpretative criteria relating to legislation<sup>3</sup> have no application to non-legislative texts except where they are specifically applied to such texts<sup>4</sup>.

1 As to the literal meaning see PARA 1470 ante.

2 See *Butler and Baker's Case* (1591) 3 Co Rep 25a at 27b; *Grey v Pearson* (1857) 6 HL Cas 61 at 106; *Caledonian Rly Co v North British Rly Co* (1881) 6 App Cas 114 at 131, HL; *Curtis v Stovin* (1889) 22 QBD 513 at 517, CA; *Lamplugh v Norton* (1889) 22 QBD 452 at 459, CA, per Bowen LJ; *Hawke v Dunn* [1897] 1 QB 579 at 586, DC. As to the construction of non-legislative documents see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 165 et seq.

3 See PARA 1375 ante.

4 See eg the Interpretation Act 1978 s 23(3) whereby s 9 (see PARA 1387 ante) and s 19(1) (see PARA 1255 ante) apply to deeds and other instruments and documents as they apply to Acts and subordinate legislation; and in the application of s 17(2)(a) (see PARA 1303 ante) to Acts passed or subordinate legislation made after 1 January 1979, the reference to any other enactment includes any deed or other instrument or document. As to the main linguistic canons of construction applicable to legislation see PARA 1484 et seq post. For the meaning of 'Act' and 'subordinate legislation' see PARA 1232 note 2 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vii) Linguistic Canons of Construction/1484. Construction as a whole.

#### **1484. Construction as a whole.**

It is one of the linguistic canons applicable to the construction of legislation<sup>1</sup> that an Act is to be read as a whole<sup>2</sup>, so that an enactment within it<sup>3</sup> is to be treated not as standing alone but as falling to be interpreted in its context as part of the Act<sup>4</sup>. The essence of construction as a whole is that it enables the interpreter to perceive that a proposition in one part of the Act is by implication modified by another provision elsewhere in the Act<sup>5</sup>. Construction as a whole requires that, unless the contrary appears, every word in the Act should be given a meaning<sup>6</sup>, the same word should be given the same meaning<sup>7</sup>, and different words should be given different meanings<sup>8</sup>.

It is sometimes said that where there is an irreconcilable inconsistency between two provisions in the same Act, the later prevails<sup>9</sup>, but this is doubtful<sup>10</sup>, and the better view appears to be that the courts must determine which is the leading provision and which the subordinate provision, and which must give way to the other<sup>11</sup>.

1 As to the nature of these linguistic canons see PARA 1483 ante.

2 *Doe d Bywater v Brandling* (1828) 7 B & C 643 at 660; *Colquhoun v Brooks* (1889) 14 App Cas 493 at 506, HL; *Canada Sugar Refining Co v R* [1898] AC 735 at 741, PC; *IRC v Herbert* [1913] AC 326 at 332, HL; *A-G v Milne* [1914] AC 765 at 771, HL; *Lumsden v IRC* [1914] AC 877, HL; *Watney, Combe, Reid & Co v Berners* [1915] AC 885 at 891, HL; *R v Southampton Income Tax Comrs, ex p Singer* [1916] 2 KB 249 at 257; *Re Plymouth Corp'n and Walter* [1918] 2 Ch 354, CA; *Daymond v South West Water Authority* [1976] AC 609, [1976] 1 All ER 39, HL. There is also a sense in which Acts in pari materia are to be read collectively as a whole: see *South West Water Authority v Rumble's* [1985] AC 609 at 617, [1985] 1 All ER 513 at 516, HL, per Lord Scarman: 'It is not...



possible to determine their true meaning [ie of the Water Act 1973 s 30(1A)(a), (b) (repealed)] save in the context of the legislation read as a whole'. As to Acts in *pari materia* see PARA 1220 ante.

3 As to the nature of an enactment see PARA 1232 ante.

4 As to the functional construction rule, requiring an enactment to be construed in accordance with the nature of its function within the Act, see PARA 1393 ante.

5 See eg *Dixon v BBC* [1979] QB 546, [1979] 2 All ER 112, CA; *Cooper v Motor Insurers' Bureau* [1985] QB 575, [1985] 1 All ER 449, CA. As to statutory implications see PARA 1234 ante.

6 See eg *A-G's Reference (No 1 of 1975)* [1975] QB 773 at 779, [1975] 2 All ER 684 at 686, CA; *Albert v Lavin* [1982] AC 546 at 561, [1981] 1 All ER 628 at 639, DC (on appeal [1982] AC 546, [1981] 3 All ER 879, HL); *R v Kimber* [1983] 3 All ER 316 at 320, [1983] 1 WLR 1118 at 1122-1123, CA (use of 'unlawful' in the definition of an offence not tautologous); *Chaudhary v Chaudhary* [1985] Fam 19, [1984] 3 All ER 1017, CA; *R v Millward* [1985] QB 519, [1985] 1 All ER 859, CA. As to tautology see *Farrell v Alexander* [1977] AC 59 at 87, [1976] 2 All ER 721 at 737, HL, per Lord Simon of Glaisdale. As to garbled or otherwise obscure texts see PARA 1470 ante.

7 *Re National Savings Bank Asscn* (1866) 1 Ch App 547 at 550; *Courtauld v Legh* (1869) LR 4 Exch 126 at 130; *Lewis v Cattle* [1938] 2 KB 454 at 457, [1938] 2 All ER 368 at 370, DC; *Madras Electricity Supply Corpn v Boarland (Inspector of Taxes)* [1955] AC 667 at 685, [1955] 1 All ER 753 at 759, HL; *University College Oxford v Durdy* [1982] Ch 413 at 419, [1982] 1 All ER 1108 at 1111-1112, CA. As to defined terms see PARA 1389 ante.

8 See *R v Great Bolton Inhabitants* (1828) 8 B & C 71 at 74; *Hadley v Perks* (1866) LR 1 QB 444 at 457 per Blackburn J; *Brighton Parish Guardians v Strand Union Guardians* [1891] 2 QB 156 at 167, CA, per Lord Esher MR; *Re Stock & Share Auction & Banking Co* [1894] 1 Ch 736. However Blackburn J recognised the possibility of elegant variation when he said that the legislature 'to improve the graces of the style and to avoid using the same words over and over again' may employ different words without any intention to change the meaning: see *Hadley v Perks* supra at 457. Where a difference of wording is inexplicable unless different meanings were intended, the court does its best to find those different meanings: see eg *Gibson v Skibs A/S Marina and Orkla Grobe A/B and Smith Coggins Ltd* [1966] 2 All ER 476 at 478, [1966] 2 Lloyd's Rep 39 at 43 per Cantley J; *Re Beaumont decd*, *Martin v Midland Bank Trust Co Ltd* [1980] Ch 444, [1980] 1 All ER 266. Provisions of a consolidation Act (see PARA 1225 ante) may have their origins in different legislation, so that the same word may bear different meanings in different provisions: see *IRC v Hinchy* [1960] AC 748 at 766, [1960] 1 All ER 505 at 511, HL; *R v Burt, ex p Presburg* [1960] 1 QB 625 at 632, [1960] 1 All ER 424 at 427, DC.

9 *Wood v Riley* (1867) LR 3 CP 26 at 27 ('the known rule is that the last must prevail'). See also *Sheffield Corpn v Sheffield Electric Light Co* [1898] 1 Ch 203; *Eastbourne Corpn v Fortes Ice Cream Parlour (1955) Ltd* [1959] 2 QB 92 at 107, [1959] 2 All ER 102 at 107.

10 *Castrique v Page* (1853) 13 CB 458 at 461.

11 *Institute of Patent Agents v Lockwood* [1894] AC 347 at 360, HL. See also *Laker Airways Ltd v Department of Trade* [1977] QB 643, [1977] 2 All ER 182, CA; *Owens Bank Ltd v Cauche* [1989] 1 WLR 559, PC. It has been said that the 'so-called rule' in *Wood v Riley* (1867) LR 3 CP 26 at 27, if it had ever existed, is long since obsolete; 'such a mechanical approach... is altogether out of step with the modern, purposive approach to the interpretation of statutes and documents': see *Re Marr (a bankrupt)* [1990] Ch 773 at 784, [1990] 2 All ER 880 at 886, CA, per Nicholls LJ. However, there may in rare cases be no means of deciding between conflicting provisions on purposive grounds, so that a rule of thumb is needed. It used to be the practice, and in the case of private and personal Acts still is, to place saving clauses at the end, with the intent that they should override anything inconsistent in the earlier part of the Act. As to the operation of general and particular enactments see PARA 1235 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vii) Linguistic Canons of Construction/1485. Construction as one.

### 1485. Construction as one.

When it is expressly provided that two Acts which are in *pari materia*<sup>1</sup> are to be construed as one or read together, every part of each of them must be construed as if it had been contained

in one Act, and recourse may be had to the earlier Act to explain a provision of the later Act<sup>2</sup>. This technique is liable to give rise to difficulty in interpretation, and the practice of inserting such express provisions in Acts has fallen into disfavour. However, it remains the case that even without the insertion of such an express provision, if the Acts are in *pari materia* that alone requires that they should so far as practicable be read together.

Comparison between Acts not in *pari materia* or the decisions on them affords no reliable guide to their construction<sup>3</sup>, since the same words used in different statutory codes may have different meanings in each code, according to the intentions of the Acts and the mischiefs they are designed to prevent<sup>4</sup>. This does not mean, however, that assistance may not be derived from contrasting the language used in different Acts dealing with the same topic<sup>5</sup>.

If there is some discrepancy between Acts that are to be construed as one, it may be necessary to hold that the later Act has to some extent modified the earlier Act<sup>6</sup>. If, however, the earlier Act is clear it is unlikely that on this ground alone it should be taken as modified by the later one, at least where the Acts are modern and may be taken to be drafted with precision<sup>7</sup>. The earlier enactment may directly or indirectly be rendered inoperative *pro tanto* by an inconsistent provision of the later Act<sup>8</sup>, but, if it is reasonably possible to construe the enactments so as to give effect to both, that must be done.

Unless the contrary intention appears, it is to be assumed that similar language in Acts in *pari materia* is intended to be similarly interpreted<sup>9</sup>, and that differences of language between an earlier and a later such Act are intentional<sup>10</sup>. It may be assumed that Parliament does not change the language of a provision unless it intends to change its meaning<sup>11</sup>; but change of language is not conclusive that change of interpretation is intended<sup>12</sup>, and may sometimes be simply due to poor drafting<sup>13</sup>, or, on the other hand, to improvements in drafting, such as the omission of words which were mere surplusage<sup>14</sup>.

The legal meaning of the earlier of two Acts in *pari materia* cannot generally be ascertained by looking at what is enacted in the later one<sup>15</sup>, even where the two Acts are directed to be construed as one<sup>16</sup>. The position may, however, be different where the later Act amends the earlier one or purports to declare its meaning<sup>17</sup>, or where the legal meaning of the earlier enactment is uncertain<sup>18</sup>. Where a far-reaching change in the law is enacted in a particular field, it is possible, in appropriate instances, that the court will construe earlier legislation as a part of a new whole and give it a broader interpretation than would formerly have been proper<sup>19</sup>.

1 As to Acts in *pari materia* see PARA 1220 ante.

2 *Kirkness (Inspector of Taxes) v John Hudson & Co Ltd* [1955] AC 696 at 713, [1955] 2 All ER 345 at 352, HL, per Viscount Simonds, explaining *Canada Southern Rly Co v International Bridge Co* (1883) 8 App Cas 723 at 727, PC, per Lord Selborne LC.

3 *Knowles & Sons v Lancashire and Yorkshire Rly Co* (1889) 14 App Cas 248 at 253, HL; *IRC v Forrest* (1890) 15 App Cas 334 at 353, HL; *Re Lord Gerard's Settled Estate* [1893] 3 Ch 252 at 258, CA; *Kydd v Liverpool Watch Committee* [1908] AC 327 at 330, HL; *Powell v Cleland* [1948] 1 KB 262 at 273, [1947] 2 All ER 672 at 676, CA. See also *Wiltshire v Barrett* [1966] 1 QB 312 at 322, [1965] 2 All ER 271 at 274, CA, per Lord Denning MR, and at 328 and 278 per Davies LJ; *Hammersmith and Fulham London Borough v Harrison* [1981] 2 All ER 588 at 598, [1981] 1 WLR 650 at 662, CA, per Brandon LJ.

4 *R v Armagh Justices* [1931] NI 209 at 213; *Powell v Cleland* [1948] 1 KB 262, [1947] 2 All ER 672, CA. As to construction by reference to the mischief see PARA 1474 ante.

5 See eg *R v Westminster Betting Licensing Committee, ex p Peabody Donation Fund* [1963] 2 QB 750, [1963] 2 All ER 544, DC; *Clowser v Chaplin* [1981] 2 All ER 267 at 270, [1981] 1 WLR 837 at 842, HL, per Lord Keith of Kinkel; *Customs and Excise Comrs v Hedon Alpha Ltd* [1981] QB 818 at 826, [1981] 2 All ER 697 at 702-703, CA, per Ackner LJ.

6 *Canada Southern Rly Co v International Bridge Co* (1883) 8 App Cas 723 at 727, PC, per Lord Selborne LC, as explained in *Kirkness (Inspector of Taxes) v John Hudson & Co Ltd* [1955] AC 696 at 713, [1955] 2 All ER 345 at 352, HL, per Viscount Simonds; *Willingale v Norris* [1909] 1 KB 57 at 66-67; *A-G v Leicester Corp'n* [1910] 2 Ch 359 at 369; *Charing Cross Electricity Supply Co v Hydraulic Power Co* [1914] 3 KB 772, CA; *Hart v Hudson*

*Bros Ltd* [1928] 2 KB 629 at 635; *Phillips v Parnaby* [1934] 2 KB 299; *Crowe (Valuation Officer) v Lloyds British Testing Co Ltd* [1960] 1 QB 592 at 619, 623, [1960] 1 All ER 411 at 421, 423, CA. As to implied amendment see PARA 1290 ante.

7 *Ormond Investment Co Ltd v Betts* [1928] AC 143, HL; *Kirkness (Inspector of Taxes) v John Hudson & Co Ltd* [1955] AC 696, [1955] 2 All ER 345, HL; *Davies Jenkins & Co Ltd v Davies (Inspector of Taxes)* [1968] AC 1097, [1967] 1 All ER 913, HL. See also *Mather v Brown* (1876) 1 CPD 596.

8 *A-G v Great Eastern Rly Co* (1872) 7 Ch App 475 at 482; *London, Chatham and Dover Rly Co v Wandsworth Board of Works* (1873) LR 8 CP 185 at 189; *Crocker v Knight* [1892] 1 QB 702, CA. As to implied repeal see PARA 1299 et seq ante.

9 *Lennon v Gibson and Howes Ltd* [1919] AC 709 at 714, PC. See also *Foster v Great Western Rly Co* (1882) 8 QBD 515 at 522, CA; *Barlow v Teal* (1885) 15 QBD 403 at 404-405; *Fisher v Raven* [1964] AC 210 at 229, [1963] 2 All ER 389 at 392, HL, per Lord Dilhorne LC; *ER Ives Investment Ltd v High* [1967] 2 QB 379 at 395, [1967] 1 All ER 504 at 508, CA, per Lord Denning MR; *George Hensher Ltd v Restawile Upholstery (Lancs) Ltd* [1976] AC 64 at 85, [1974] 2 All ER 420 at 429, HL, per Viscount Dilhorne; *R v Wheatley* [1979] 1 All ER 954, [1979] 1 WLR 144, CA; *R v Bouch* [1983] QB 246, [1982] 3 All ER 918, CA; *Earl of Lonsdale v A-G* [1982] 3 All ER 579 at 625, [1982] 1 WLR 887 at 994 per Slade J. As to the principle in *Barras v Aberdeen Steam Trawling and Fishing Co Ltd* [1933] AC 402 at 411, HL, see PARA 1416 ante.

10 *Dickenson v Fletcher* (1873) LR 9 CP 1 at 8; *Reed v Nutt* (1890) 24 QBD 669 at 673, DC; *DR Fraser & Co v Minister of National Revenue* [1949] AC 24 at 33, PC; and cf para 1484 ante. Assistance may also be obtained from contrasting different provisions of the same Act (see eg *Mullins v Collins* (1874) LR 9 QB 292, where the omission of words requiring a guilty knowledge when such words could be found in a different subsection rendered an employer liable under a penal Act for the act of his employee) or similar provisions of different Acts (see eg *R v Westminster Betting Licensing Committee, ex p Peabody Donation Fund* [1963] 2 QB 750, [1963] 2 All ER 544, DC; *Customs and Excise Comrs v Hedon Alpha Ltd* [1981] QB 818 at 824, [1981] 2 All ER 697 at 702, CA, per Stephenson LJ, and at 703 and 826 per Ackner LJ). Cf para 1494 post.

11 See *Farrell v Alexander* [1977] AC 59 at 78, [1976] 2 All ER 721 at 730, HL, per Viscount Dilhorne; *Union Bank of London v Ingram* (1882) 20 ChD 463 at 465, CA. Cf *A-G v Sillem* (1864) 2 H & C 431 at 516; *Mullins v Collins* (1874) LR 9 QB 292.

12 *R v East Teignmouth Inhabitants* (1830) 1 B & Ad 244 at 249; *Hadley v Perks* (1866) LR 1 QB 444 at 457; *Re Wright, ex p Arnold* (1876) 3 Ch D 70 at 78, CA; *Lawless v Sullivan* (1881) 6 App Cas 373 at 383, PC; *A-G v Bradlaugh* (1885) 14 QBD 667 at 684; *Hopes v Hopes* [1949] P 227 at 237, [1948] 2 All ER 920 at 925, CA; cf para 1484 ante.

13 *R v Buttle* (1870) LR 1 CCR 248 at 250-251; *Spencer v Metropolitan Board of Works* (1882) 22 ChD 142 at 161, CA; *Nottage v Jackson* (1883) 11 QBD 627 at 630-631, CA.

14 *Re Wood* (1872) 7 Ch App 302 at 306 per Mellish LJ.

15 *Ward v Folkestone Waterworks* (1890) 24 QBD 334 at 339-340; *Re Bolton Estates Act* (1902) 72 LJ Ch 55 (revsd without affecting this point sub nom *Re Bolton Estates, Russell v Meyrick* [1903] 2 Ch 461, CA), following *Macassey v Thompson, Macassey v Huston* (1902) 36 ILT 162, HL. Cf *Casanova v R, The Ricardo Schmidt* (1866) LR 1 PC 268 at 277. As to the legal meaning of an enactment see PARAS 1373-1374 ante.

16 *Ormond Investment Co Ltd v Betts* [1928] AC 143, HL; *Kirkness (Inspector of Taxes) v John Hudson & Co Ltd* [1955] AC 696, [1955] 2 All ER 345, HL; *Davies Jenkins & Co Ltd v Davies (Inspector of Taxes)* [1968] AC 1097, [1967] 1 All ER 913, HL.

17 See *Ormond Investment Co Ltd v Betts* [1928] AC 143 at 154, HL, per Lord Buckmaster; *Kirkness (Inspector of Taxes) v John Hudson & Co Ltd* [1955] AC 696 at 735, [1955] 2 All ER 345 at 366, HL. It has been said that the meaning of an unamended provision of an earlier Act is not altered by other amendments made to that Act: *Lewisham London Borough Council v Lewisham Juvenile Court Justices* [1980] AC 273 at 282, [1979] 2 All ER 297 at 299, HL, per Viscount Dilhorne; *Chin Choy v Collector of Stamp Duties* [1981] 1 WLR 1201 at 1205, PC. See also *Nabi (Ghulam) v Heaton (Inspector of Taxes)* [1981] 1 WLR 1052 at 1058 per Vinelott J; on appeal [1983] 1 WLR 626, 57 TC 292, CA. Cf the view of Lord Salmon in *Lewisham London Borough Council v Lewisham Juvenile Court Justices* supra at 291 and 307, that the whole of the earlier Act as amended should be considered when construing any section in it. It seems that a statutory provision which declares the effect of an earlier Act for the future only will not be taken into account by a court in construing the Act in relation to a time prior to the operation of the declaratory provision: *Fothergill v Monarch Airlines Ltd* [1981] AC 251 at 288, [1980] 2 All ER 696 at 711, HL, per Lord Fraser of Tullybelton, and at 301 and 720 per Lord Roskill; *Chin Choy v Collector of Stamp Duties* supra at 1205. See also *Port of London Authority v Canvey Island Comrs* [1932] 1 Ch 446 at 492, CA, where Lawrence LJ expressed the view that the erroneous recital in an Act of 1883 of the effect of an Act of 1792 did not affect the construction of the earlier Act.

18 *Ormond Investment Co v Betts* [1928] AC 143 at 154, 164. See also *Morgan v London General Omnibus Co* (1883) 12 QBD 201 at 207, DC; *Gas Light and Coke Co v Hardy* (1886) 17 QBD 619 at 621, CA; *A-G v Clarkson* [1900] 1 QB 156 at 163-164, CA; *Cape Brandy Syndicate v IRC* [1921] 2 KB 403 at 414; *Re Westby's Settlement, Westby v Ashley* [1950] Ch 296 at 303-304, [1950] 1 All ER 479 at 482, CA; *Camille and Henry Dreyfus Foundation Inc v IRC* [1954] Ch 672, [1954] 2 All ER 466, CA (affd [1956] AC 39, [1955] 3 All ER 97, HL); *Kirkness (Inspector of Taxes) v John Hudson & Co Ltd* [1955] AC 696, [1955] 2 All ER 345, HL; *IRC v Butterley Co Ltd* [1955] Ch 453 at 484, [1955] 1 All ER 891 at 909, CA (affd [1957] AC 32, [1956] 2 All ER 197, HL); *John Walsh Ltd v Sheffield City Council and Tranter (Valuation Officer)* [1957] 3 All ER 353 at 357, [1957] 1 WLR 1074 at 1079, CA; *Hall v Hall* [1962] 2 All ER 129 at 134-135, [1962] 1 WLR 478 at 484, DC (revsd on another point [1962] 3 All ER 518, [1962] 1 WLR 1246, CA); *Earl of Lonsdale v A-G* [1982] 3 All ER 579 at 622, [1982] 1 WLR 887 at 940 per Slade J.

19 *Tursi v Tursi* [1958] P 54 at 69, [1957] 2 All ER 828 at 836.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vii) Linguistic Canons of Construction/1486. Construction of general and particular enactments.

#### **1486. Construction of general and particular enactments.**

General enactments<sup>1</sup> should receive a general construction, unless the application of the relevant interpretative criteria gives some ground for restricting their meaning<sup>2</sup>. However, the fact that general words are used in an Act is not in itself a conclusive reason why every case falling literally within them should be governed by the words, and the context may indicate that they should be given a restrictive meaning<sup>3</sup>. General words literally capable of extending to the whole of an Act do not necessarily so extend<sup>4</sup>.

Whenever there is a general enactment in an Act which, if taken in its most comprehensive sense, would override a particular enactment in the same Act, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the Act to which it may properly apply<sup>5</sup>.

1 For the distinction between general and particular enactments see PARA 1235 ante.

2 *Copeman v Gallant* (1716) 1 P Wms 314; *Beckford v Wade* (1805) 17 Ves 87 at 91-92, PC; *Phillips v Poland* (1866) LR 1 CP 204 at 207; *R v Liverpool Justices* (1883) 11 QBD 638 at 649, CA. As to the interpretative criteria see PARA 1375 ante.

3 *Cope v Doherty* (1858) 2 De G & J 614 at 623; *Phillips v Poland* (1866) LR 1 CP 204 at 207; *Washer v Elliott* (1876) 1 CPD 169 at 174; *Bulmer v IRC* [1967] Ch 145 at 165, [1966] 3 All ER 801 at 810 per Pennycuik J; *Daymond v South West Water Authority* [1976] AC 609, [1976] 1 All ER 39, HL. For the distinction between strict and liberal construction see PARA 1379 ante.

4 *Re Cambrian Rly Co's Scheme* (1868) 3 Ch App 278, where it was held that the words 'nothing hereinbefore contained' were limited to the preceding part of the same section; *Dormer v Newcastle-Upon-Tyne Corpn* [1940] 2 KB 204 at 212-213, [1940] 2 All ER 521 at 523-524, CA.

5 *Churchill v Crease* (1828) 5 Bing 177 at 180; *De Winton v Brecon Corpn* (1859) 26 Beav 533 at 547; *Pretty v Solly* (1859) 26 Beav 606 at 610. See also eg *R v Ramasamy* [1965] AC 1 at 26, PC, per Viscount Radcliffe. The principle does not apply where the particular is not comprehensive enough to oust the general provision: *R v Horsham Justices, ex p Farquharson* [1982] QB 762, [1982] 2 All ER 269, CA. As to construction as a whole see PARA 1484 ante. The predecessor to this paragraph was cited with approval in *Re Antiphon AB's Application* [1984] RPC 1.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vii) Linguistic Canons of Construction/1487. Applying ordinary meaning.

### 1487. Applying ordinary meaning.

It is one of the linguistic canons applicable to the construction of legislation<sup>1</sup> that where an enactment has more than one grammatical meaning then, other things being equal<sup>2</sup>, preference is to be given to the ordinary and natural meaning of the word or phrase in question<sup>3</sup>, that is its proper and most known signification<sup>4</sup>, or, if there is more than one ordinary meaning, to the most common and well-established of the possible meanings<sup>5</sup>. The context may, however, quickly drive the interpreter to one of the other meanings which may be a quite different meaning, or a subdivision of the common meaning<sup>6</sup>.

Where the words used are familiar and are in common and general use in the English language, it is inappropriate for the court to try to define them further by judicial interpretation and to lay down their meaning as a rule of construction<sup>7</sup>.

1 As to the nature of these linguistic canons see PARA 1483 ante.

2 As to the weighing and balancing of interpretative factors see PARA 1378 ante.

3 *Edrich's Case* (1603) 5 Co Rep 118a at 118b. See also *Gye v Felton* (1813) 4 Taunt 876; *Warburton v Loveland d Ivie* (1828) 1 Hud & B 623 at 648, Ex Ch; *Gwynne v Burnell* (1840) 7 Cl & Fin 572 at 607, HL; *Turner v Sheffield and Rotherham Rly Co* (1842) 10 M & W 425 at 430, 434; *Re Gorham v Bishop of Exeter, ex p Bishop of Exeter* (1850) 10 CB 102; *River Wear Comrs v Adamson* (1877) 2 App Cas 743 at 755, HL; *St John, Hampstead, Vestry v Cotton* (1886) 12 App Cas 1 at 6, HL; *Hornsey Local Board v Monarch Investment Building Society* (1889) 24 QBD 1 at 5, CA; *London and North-Western Rly Co v Evans* [1893] 1 Ch 16 at 27, CA; *Salomon v A Salomon & Co Ltd, A Salomon & Co Ltd v Salomon* [1897] AC 22 at 29, 38, HL; *R v Dodds* [1905] 2 KB 40 at 49, CA; *Vacher & Sons Ltd v London Society of Compositors* [1913] AC 107 at 117 et seq, HL; *A-G v Milne* [1914] AC 765, HL; *IRC v Smyth* [1914] 3 KB 406 at 420; *Watney, Combe, Reid & Co v Berners* [1915] AC 885 at 893-894, HL; *Re Jenkins, Jenkins v Davies* [1931] 2 Ch 218 at 231, CA; *Josephine Trust Co Ltd v Champagne* [1963] 2 QB 160, [1962] 3 All ER 136, CA; *Rookes v Barnard* [1964] AC 1129 at 1193, [1964] 1 All ER 367 at 389-390, HL, per Lord Evershed; *Pinner v Everett* [1969] 3 All ER 257 at 258, [1969] 1 WLR 1266 at 1273, HL, per Lord Reid; *Applin v Race Relations Board* [1975] AC 259 at 288, [1974] 2 All ER 73 at 90, HL, per Lord Simon of Glaisdale; *Suthendran v Immigration Appeal Tribunal* [1977] AC 359 at 368, [1976] 3 All ER 611 at 616, HL, per Lord Simon of Glaisdale; *Stock v Frank Jones (Tipton) Ltd* [1978] 1 All ER 948, [1978] 1 WLR 231, HL; *ACT Construction Ltd v Customs and Excise Comrs* [1982] 1 All ER 84, [1981] 1 WLR 1542, HL.

4 Lord Tenterden said words are to be applied 'as they are understood in common language' (*A-G v Winstanley* (1831) 2 Dow & Cl 302 at 310, HL); Parke B spoke of adhering to 'the grammatical and ordinary sense of the words used' (*Grey v Pearson* (1857) 6 HL Cas 61 at 106); Viscount Dilhorne LC required words to be given 'their ordinary natural meaning' (*Selvey v DPP* [1970] AC 304 at 339, [1968] 2 All ER 497 at 508, HL); Graham J said 'the words must be treated as having their ordinary English meaning as applied to the subject matter with which they are dealing' (*Exxon Corp'n v Exxon Insurance Consultants International Ltd* [1982] Ch 119 at 129, [1981] 2 All ER 495 at 502 (on appeal [1982] Ch 119, [1981] 3 All ER 241, CA)).

5 *R v Income Tax Comrs* (1888) 22 QBD 296 at 309, CA, per Fry LJ ('The words of a statute are to be taken in their primary, and not in their secondary, signification'); affd sub nom *Income Tax Special Purposes Comrs v Pemsell* [1891] AC 531, HL. See also *A-G of Ontario v Mercer* (1883) 8 AC 767 at 778, PC.

6 See eg *Wandsworth Board of Works v United Telephone Co* (1884) 13 QBD 904 at 920, CA, per Bowen LJ; *Armstrong v Clark* [1957] 2 QB 391 at 394, [1957] 1 All ER 433 at 435, DC, per Lord Goddard CJ; *Medical Defence Union Ltd v Department of Trade* [1980] Ch 82 at 98, [1979] 2 All ER 421 at 431 per Megarry V-C; *Newbury District Council v Secretary of State for the Environment* [1981] AC 578 at 605, [1980] 1 All ER 731 at 743, HL; *Bromley London Borough Council v Greater London Council* [1983] 1 AC 768, [1982] 1 All ER 129, HL (meaning of 'economic'); *Hall v Cotton* [1987] QB 504 at 510, [1986] 3 All ER 332 at 335, DC, per Stocker LJ; *Hampshire County Council v Milburn* [1991] 1 AC 325, [1990] 2 All ER 257, HL; *R v Callender* [1993] QB 303, [1992] 3 All ER 51, CA; *A-G v Associated Newspapers Ltd* [1994] 2 AC 238, [1994] 1 All ER 556, HL (meaning of 'disclose'); *Jones v Chief Adjudication Officer, Sharples v Chief Adjudication Officer* [1994] 1 All ER 225, [1994] 1 WLR 62, CA; *R v Crown Court at Knightsbridge, ex p Dunne, Brock v DPP* [1993] 4 All ER 491 at 496-497, [1994] 1 WLR 296 at 303, DC, per Glidewell LJ.

7 *Bath v British Transport Commission* [1954] 2 All ER 542 at 543, [1954] 1 WLR 1013 at 1015, CA; *Kimpton v Steel Co of Wales Ltd* [1960] 2 All ER 274 at 276-277, [1960] 1 WLR 527 at 529-530, CA; *Stephens v Cuckfield RDC* [1960] 2 QB 373 at 382-383, [1960] 2 All ER 716 at 719-720, CA; *Brutus v Cozens* [1973] AC 854, [1972] 2 All ER 1297, HL. See also *Customs and Excise Comrs v Top Ten Promotions Ltd* [1969] 3 All ER 39 at 95, [1969] 1 WLR 1163 at 1178, HL, per Lord Wilberforce.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vii) Linguistic Canons of Construction/1488. Technical terms; in general.

#### **1488. Technical terms; in general.**

It is one of the linguistic canons applicable to the construction of legislation<sup>1</sup> that if a word or phrase has a technical meaning in relation to a particular expertise, and is used in a context dealing with that expertise, it is to be given its technical meaning, unless the contrary intention appears<sup>2</sup>. If the expertise is the law of the court's jurisdiction, the court takes judicial notice of the meaning of the technical term<sup>3</sup> and evidence as to its meaning is inadmissible<sup>4</sup>; but in the case of any other expertise, whether foreign law, or a different field of knowledge than law, evidence as to the meaning of the technical term may be required<sup>5</sup>. Reference books may be consulted in lieu of evidence<sup>6</sup>.

1 As to the nature of these linguistic canons see PARA 1483 ante.

2 *R v Slator* (1881) 8 QBD 267 at 272 per Denman J; *Holt & Co v Collyer* (1881) 16 ChD 718 at 720 per Farwell LJ; *Unwin v Hanson* [1891] 2 QB 115 at 119, CA, per Lord Esher MR; *Jenkins v IRC* [1944] 2 All ER 491 at 495, CA, per Lord Greene MR.

3 As to judicial notice see PARA 1352 ante.

4 *Marquis of Camden v IRC* [1914] 1 KB 641 at 650, CA. See also *R v Calder and Boyars Ltd* [1969] 1 QB 151, [1968] 3 All ER 644, CA; *R v Anderson* [1972] 1 QB 304, [1971] 3 All ER 1152, CA; *R v Stamford* [1972] 2 QB 391, [1972] 2 All ER 427, CA.

5 See eg *Prophet v Platt Bros & Co Ltd* [1961] 2 All ER 644, [1961] 1 WLR 1130, CA (fettling of metal castings); *Blankley v Godley* [1952] 1 All ER 436n (aircraft 'taking off'); *London and North Eastern Rly Co v Berriman* [1946] AC 278, [1946] 1 All ER 255, HL (repairing of permanent way); *R v Skirving* [1985] QB 819, [1985] 2 All ER 705, CA (where book on cocaine alleged to be an 'obscene article' within the meaning of the Obscene Publications Act 1959, expert evidence as to the nature and effect of cocaine held admissible, since this is not within ordinary experience).

6 See PARA 1371 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vii) Linguistic Canons of Construction/1489. Technical terms; English and Scottish etc Acts.

#### **1489. Technical terms; English and Scottish etc Acts.**

A general Act applying both to England and Wales and to Scotland, using terms of art which have different meanings in the two countries, may be treated differently in the courts of each<sup>1</sup>. Where such a general Act, especially if it is a taxing Act<sup>2</sup>, uses words which do not necessarily have different meanings in the two countries, the construction adopted by the courts in one

country should be followed in the other<sup>3</sup>, and generally that construction should, if possible, be adopted which makes the operation and effect of the Act the same in both countries<sup>4</sup>. Similarly, when such an Act uses as terms of art legal expressions which properly belong to one country only, the Act should be applied to a case arising in the sister country in an analogous or corresponding sense<sup>5</sup>. In respect of certain terms, statutory provision has been made as to their respective meanings when used in relation to England and Wales, Scotland or Northern Ireland<sup>6</sup>.

1 *R v Slaton* (1881) 8 QBD 267 at 272 ('indictment'); *Re Wanzer Ltd* [1891] 1 Ch 305 at 311 ('sequestration').

2 *Wiseburgh v Domville (Inspector of Taxes)* [1956] 1 All ER 754, [1956] 1 WLR 312, CA; *Winter v IRC* [1963] AC 235 at 248, [1961] 3 All ER 855 at 859, HL, per Lord Reid, and at 263 and 868 per Lord Guest.

3 See INCOME TAXATION vol 23(1) (Reissue) PARA 25; STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1009.

4 *Lord Saltoun v Advocate General* 1860 3 Macq 659 at 671, 675, HL; *Lord Braybrooke v A-G* (1861) 9 HL Cas 150 at 165; *R v Income Tax Comrs* (1888) 22 QBD 296 at 310, CA (affd sub nom *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 579-580, HL); *New York Breweries Co v A-G* [1899] AC 62 at 68, HL; *Income Tax General Purposes Comrs for City of London v Gibbs* [1942] AC 402 at 414, [1942] 1 All ER 415 at 422, HL. See also *North British Ry Co v Budhill Coal and Sandstone Co* [1910] AC 116 at 135, HL; *Regional Properties Co Ltd v Frankenschwerth and Chapman* [1951] 1 KB 631 at 637, [1951] 1 All ER 178 at 181, CA (cited in *Thurogood (Thorogood) v Van Den Berghs and Jurgens Ltd* [1951] 2 KB 537 at 550, [1951] 1 All ER 682 at 689, CA); *W Devis & Sons Ltd v Atkins* [1977] AC 931 at 957, [1977] 3 All ER 40 at 51, HL, per Viscount Dilhorne. As to the effect of Scottish decisions on such Acts see CIVIL PROCEDURE.

5 *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 580, HL.

6 See the Interpretation Act 1978 s 5, Sch 1 (as amended); and PARA 1382 et seq ante. Acts applying to more than one of these countries commonly contain special provisions defining certain terms differently in their application to each country: see eg the Radioactive Substances Act 1993 s 47(1) (amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 102, Sch 18 as from a day to be appointed) (different definitions of 'the appropriate minister', 'the chief inspector', 'local authority' and 'relevant water body').

## UPDATE

### 1489 Technical terms; English and Scottish etc Acts

NOTE 6--Definition of 'relevant water body' in Radioactive Substances Act 1993 s 47(1) partly repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

Definition of 'relevant water body' in Radioactive Substances Act 1993 s 47(1) amended: Marine and Coastal Access Act 2009 Sch 14 para 17 (not yet in force).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vii) Linguistic Canons of Construction/1490. Recognition by associated words.

### 1490. Recognition by associated words.

It is one of the linguistic canons applicable to the construction of legislation<sup>1</sup> that a word of uncertain meaning 'is recognised by its associates', a translation of the expression *noscitur a sociis*<sup>2</sup>. A word or phrase in an enactment must always be construed in the light of the

surrounding words<sup>3</sup>; however to gain help from this canon it is necessary to identify the group or 'societas' in question<sup>4</sup>. Furthermore the drafter's intention may be a different one<sup>5</sup>.

1 As to the nature of these linguistic canons see PARA 1483 ante.

2 As to detailed applications of this linguistic canon see PARAS 1491 (ejusdem generis principle) and 1495 (rank principle) post.

3 This is because 'words, and particularly general words, cannot be read in isolation; their colour and their content are derived from their context': *A-G v Prince Ernest Augustus of Hanover* [1957] AC 436 at 461, [1957] 1 All ER 49 at 53, HL, per Viscount Simonds. 'English words derive colour from those which surround them. Sentences are not mere collections of words to be taken out of the sentence, defined separately by reference to the dictionary or decided cases, and then put back into the sentence with the meaning which you have assigned to them as separate words...': *Bourne v Norwich Crematorium Ltd* [1967] 2 All ER 576 at 578, [1967] 1 WLR 691 at 696 per Stamp J. Thus in considering whether a county court is an inferior court for the purposes of the Contempt of Court Act 1981, the House of Lords was influenced by the way, in the definition of 'court' in s 19, certain general words were 'sandwiched' between descriptions of superior courts; these were words 'to which the principle of construction *noscitur a sociis* applies': *Peart v Stewart* [1983] 2 AC 109 at 117, [1983] 1 All ER 859 at 862, HL, per Lord Diplock. In *Goodhew v Morton* [1962] 2 All ER 771, [1962] 1 WLR 210, DC, 'inclosed yard, garden or area' was on this principle held to include an industrial yard with open access from outside. For other examples see *Scales v Pickering* (1828) 4 Bing 448; *Foster v Diphwys Casson Slate Co* (1887) 18 QBD 428; *London & North Eastern Railway Co v Berriman* [1946] AC 278 at 307, [1946] 1 All ER 255 at 267, HL, per Lord Porter; *LCC v Tann* [1954] 1 All ER 389, [1954] 1 WLR 371, DC; *Abrahams v Cavey* [1968] 1 QB 479, [1967] 3 All ER 179, DC; *Lee-Verhulst (Investments) Ltd v Harwood Trust* [1973] QB 204 at 217, [1972] 3 All ER 619 at 627, CA, per Stamp LJ; *Garforth (Inspector of Taxes) v Newsmith Stainless Ltd* [1979] 2 All ER 73 at 76, [1979] 1 WLR 409 at 412 per Walton J; *Kassam v Immigration Appeal Tribunal* [1980] 2 All ER 330 at 335; sub nom *R v Immigration Appeal Tribunal, ex p Kassam* [1980] 1 WLR 1037 at 1043-1044, CA, per Ackner LJ; *Miller v FA Sadd & Son Ltd*, *Miller v Pickering Bull & Co Ltd* [1981] 3 All ER 265 at 269, DC, per McNeill J; *Westminster City Council v Ray Alan (Manshops) Ltd* [1982] 1 All ER 771, [1982] 1 WLR 383, DC; *Bromley London Borough Council v Greater London Council* [1983] 1 AC 768 at 841, [1982] 1 All ER 129 at 174, HL, per Lord Scarman.

4 'The maxim *noscitur a sociis* is always a treacherous one unless you know the *societas* to which the *socii* belong': *Letang v Cooper* [1965] 1 QB 232 at 247, [1964] 2 All ER 929 at 937, CA, per Lord Diplock. The word *societas* means 'society' and the nature of the intended society (if any) can only be gathered from the words used. There may not be any precise intention, but the nature of the members of the society (*socii*) is nevertheless an approximate indication of meaning.

5 See eg *R v Marcus* [1981] 2 All ER 833 at 837, [1981] 1 WLR 774 at 780, CA, per Tudor Evans J (the Offences against the Person Act 1861 deals with offences in a declining order of gravity; 'noxious' in s 24 does not take colour from the phrase 'poison or other destructive or noxious thing' (which appears in several sections of the Act) but means something different in quality from and of less importance than poison or other destructive things).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vii) Linguistic Canons of Construction/1491. Words ejusdem generis.

### 1491. Words ejusdem generis.

As an application of the linguistic canon *noscitur a sociis*<sup>1</sup> the term ejusdem generis (of the same kind or nature), has been attached to a canon of construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character<sup>2</sup>. The principle may apply whatever the form of the association, but the most usual form is a list or string of genus-indicating terms followed by wider residuary or sweeping-up words<sup>3</sup>. If the drafter desires to indicate that the principle is not to apply, the residuary or sweeping-up words are qualified by a suitable generalisation such as 'or things of whatever description'<sup>4</sup>. Alternatively the exclusion of the principle may be left to be implied, having regard to other interpretative criteria<sup>5</sup>. An implication against the application of



the principle so as to narrow a term arises where the term has been used elsewhere in the Act in a wide sense<sup>6</sup>.

1 See PARA 1490 ante.

2 'Unless you can find a category there is no room for the application of the ejusdem generis doctrine': *Tillmans & Co v SS Knutsford* [1908] 2 KB 385 at 403, CA, per Farwell LJ; affd [1908] AC 406, HL. See also *Russell v Scott* [1948] AC 422, [1948] 2 All ER 1, HL.

3 See eg *Hadley v Perks* (1866) LR 1 QB 444 at 457 per Blackburn J. The case concerned the phrase 'having in possession' which, if taken alone, embraces the concept of legal as well as physical possession. When used in an enactment which reads 'having in possession or conveying in any manner' (where 'conveying' is clearly limited to physical removal) the phrase has by implication a restricted meaning. As Blackburn J said, it must be limited: 'making the one co-extensive with the other, and confining it to 'having' ejusdem generis with 'conveying' '. For other examples see *Allen v Thompson* (1870) LR 5 QB 336; *East London Rly Co v Whitechurch* (1874) LR 7 HL 81; *Ashbury Rly Carriage & Iron Co v Riche* (1875) LR 7 HL 653; *Withington Local Board of Health v Manchester Corp* [1893] 2 Ch 19, CA; *Re Stockport Ragged, Industrial & Reformatory Schools* [1898] 2 Ch 687 at 696, CA, per Lindley MR; *Powell v Kempton Park Racecourse Co* [1899] AC 143, HL; *Palmer v Snow* [1900] 1 QB 725; *A-G v Seccombe* [1911] 2 KB 688; *A-G v Brown* [1920] 1 KB 773; *SS Magnhild (Owners) v McIntyre Bros & Co* [1920] 3 KB 321; *Ambatielos v Anton Jurgens Margarine Works* [1923] AC 175 at 183, HL; *Humber Conservancy Board v Federated Coal & Shipping Co Ltd* [1928] 1 KB 492; *Evans v Cross* [1938] 1 KB 694, [1938] 1 All ER 751; *United Towns Electric Co Ltd v A-G for Newfoundland* [1939] 1 All ER 423, PC; *Allen v Emmerson* [1944] KB 362 at 367, [1944] 1 All ER 344 at 347, DC, per Asquith J; *Alexander v Tredgar Iron & Coal Co Ltd* [1944] KB 390, [1944] 1 All ER 451, CA (affd [1945] AC 286, [1945] 2 All ER 275, HL); *Canadian National Rlys v Canadian Steamship Lines Ltd* [1945] AC 204 at 211, PC; *Lewisham Borough Council v Maloney* [1948] 1 KB 50, [1947] 2 All ER 36, CA; *Re Wellsted's Will Trusts* [1949] Ch 296 at 318, [1949] 1 All ER 577 at 587, CA; *Eton RDC v River Thames Conservators* [1950] Ch 540, [1950] 1 All ER 996; *Roe v Hemmings* [1951] 1 KB 676, [1951] 1 All ER 389, DC; *Gregory v Fearn* [1953] 2 All ER 559, [1953] 1 WLR 974, CA; *Brownsea Haven Properties Ltd v Poole Corp* [1958] Ch 574, [1958] 1 All ER 205, CA; *Re Latham, IRC v Barclays Bank Ltd* [1962] Ch 616, [1961] 3 All ER 903; *R v Munks* [1964] 1 QB 304, [1963] 3 All ER 757, CCA; *Papworth v Coventry* [1967] 2 All ER 41, [1967] 1 WLR 663, DC; *Coleshill and District Investment Co Ltd v Minister of Housing and Local Government* [1968] 1 All ER 62 at 65, DC, per Widgery J (revsd [1969] 2 All ER 525, [1969] 1 WLR 746, HL); *Parkes v Secretary of State for the Environment* [1979] 1 All ER 211, [1978] 1 WLR 1308, CA; *Quazi v Quazi* [1980] AC 744 at 807-808, [1979] 3 All ER 897 at 902-903, HL; *Wood v Metropolitan Police Comr* [1986] 2 All ER 570, [1986] 1 WLR 796, DC; *R v Corby Juvenile Court, ex p M* [1987] 1 All ER 992, [1987] 1 WLR 55 (where, on the facts, the principle did not apply); *DPP v Vivier* [1991] 4 All ER 18 at 19-20, [1991] RTR 205 at 208, DC.

4 *A-G v Leicester Corp* [1910] 2 Ch 359 at 369. Cf *Skinner & Co v Shew & Co* [1893] 1 Ch 413, CA; *Larsen v Sylvester & Co* [1908] AC 295, HL.

Another method is to include a definition of the residuary words. This will be construed on its own, without reference to the ejusdem generis principle: *Beswick v Beswick* [1968] AC 58 at 87, [1967] 2 All ER 1197 at 1211, HL, per Lord Guest. See also *R v Newbould* [1962] 2 QB 102 at 106, [1962] 1 All ER 693 at 695. As to statutory definitions see PARA 1389 ante.

5 See eg *Rands v Oldroyd* [1959] 1 QB 204 at 212, [1958] 3 All ER 344 at 347-348, DC, per Lord Parker CJ, where it was held that the mischief at which the enactment was directed required the crucial phrase to be given its unrestricted meaning. As to construction by reference to the mischief see PARA 1474 ante; and as to the interpretative criteria generally see PARA 1375 ante. For other examples of implied exclusion see *Skinner & Co v Shew & Co* [1893] 1 Ch 413, CA; *Alexander v Tredgar Iron & Coal Co Ltd* [1945] AC 286 at 297-298, [1945] 2 All ER 275 at 280-281, HL, per Lord Wright, and at 300-301 and 282-283 per Lord Simonds.

6 See eg *Young v Grattridge* (1868) LR 4 QB 166.

## UPDATE

### 1491 Words ejusdem generis

NOTE 4--See *Massey v Boulden* [2002] EWCA Civ 1634, [2003] 2 All ER 87.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vii) Linguistic Canons of Construction/1492. Render each to each.

#### **1492. Render each to each.**

It is one of the linguistic canons applicable to the construction of legislation<sup>1</sup> that where a complex sentence has more than one subject, and more than one object, it may be the right construction to 'render each to each' (*reddendo singula singulis*), by reading the provision distributively and applying each object to its appropriate subject. A similar principle applies to verbs and their subjects, and to other parts of speech<sup>2</sup>.

1 As to the nature of these linguistic canons see PARA 1483 ante.

2 See eg *Capcount Trading v Evans (Inspector of Taxes)* [1993] 2 All ER 125, CA (held that 'the amount or value of the consideration, in money or money's worth' in the Finance Act 1965 s 22(9), Sch 6 para 4(1) (repealed; see now the Taxation of Chargeable Gains Act 1992 s 38(1)) should be construed distributively, so that it was equivalent to 'the amount of the consideration in money or the value of the consideration in money's worth'). For other examples see *Stracey v Nelson* (1844) 12 M & W 535; *Overseers of Wigton v Overseers of Snaith* (1851) 16 QB 496; *Badger v South Yorkshire Rly and River Dun Co* (1858) 1 E & E 359 at 364; *Phillips v Highland Rly* (1883) 8 App Cas 329 at 336; *Kemp v IRC* [1905] 1 KB 581 at 587; *Bishop v Deakin* [1936] Ch 409, [1936] 1 All ER 255; *GHR Co Ltd v IRC* [1943] KB 303 at 305; *Littlewoods Mail Order Stores Ltd v IRC* [1961] Ch 597 at 623, [1961] 3 All ER 258 at 265, CA, per Lord Evershed MR ('by no means assenting to' the view expressed by Phillimore J in *Kemp v IRC* supra) (on appeal sub nom *IRC v Littlewoods Mail Order Stores Ltd* [1963] AC 135, [1962] 2 All ER 279, HL).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vii) Linguistic Canons of Construction/1493. Statement ends implication.

#### **1493. Statement ends implication.**

It is one of the linguistic canons applicable to the construction of legislation<sup>1</sup> that no inference is proper if it goes against the express words Parliament has used or, as this may be expressed, *expressum facit cessare tacitum* (statement ends implication)<sup>2</sup>.

1 As to the nature of these linguistic canons see PARA 1483 ante.

2 Co Litt 183b, 210a. 'Express enactment shuts the door to further implication': *Whiteman v Sadler* [1910] AC 514 at 527, HL, per Lord Dunedin. See also *R v Eastern Archipelago Co* (1853) 1 E & B 310 at 343; *River Thames Conservators v Smeed, Dean & Co* [1897] 2 QB 334 at 351, CA. As to implications in legislation see PARA 1234 ante. The chief application of the principle that statement ends implication lies in the maxim *expressio unius est exclusio alterius*: see PARA 1494 post.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vii) Linguistic Canons of Construction/1494. Expressing one thing excludes another.

#### **1494. Expressing one thing excludes another.**

It is one of the linguistic canons applicable to the construction of legislation<sup>1</sup> that *expressio unius est exclusio alterius* (to express one thing is [by implication] to exclude another)<sup>2</sup>. There is no room for the application of this principle where some reason other than the intention to exclude certain items exists for the express mention in question. Thus it may be intended merely as an example<sup>3</sup> or be included for abundance of caution<sup>4</sup> or for some other reason<sup>5</sup>; or the thing supposed to have been impliedly excluded may not have existed at the passing of the enactment<sup>6</sup>.

1 As to the nature of these linguistic canons see PARA 1483 ante.

2 Co Litt 210a. This principle, known as the *expressio unius* principle, is an application of the principle that statement ends implication: see PARA 1493 ante. It is applied in particular where a formula which in itself may or may not include a certain class is accompanied by words of extension or exception naming only some members of that class, the remaining members of the class being then taken to be excluded from the formula. See eg *Mullins v Collins* (1874) LR 9 QB 292 at 295 (in the Licensing Act 1872 s 16, which laid down three separate offences against public order, the word 'knowingly' was included in the statement of the first offence, but omitted for the other two): cf *Somerset v Wade* [1894] 1 QB 574. For other cases where the principle was applied (though not always by name) or mentioned see *R v Caledonian Rly* (1850) 16 QB 19 at 30 per Lord Campbell CJ; *Blackburn v Flavell* (1881) 6 App Cas 628 at 634, PC; *R v Hall* [1891] 1 QB 747; *Lowe v Dorling & Son* [1906] 2 KB 772 at 784-785, CA, per Farwell LJ; *Dean v Wiesengrund* [1955] 2 QB 120, [1955] 2 All ER 432, CA; *Malone v Comr of Police of the Metropolis (No 2)* [1979] Ch 344 at 372, [1979] 2 All ER 620 at 642 per Megarry V-C; *Payne v Lord Harris of Greenwich* [1981] 2 All ER 842 at 853, [1981] 1 WLR 754 at 767, CA, per Brightman LJ; *A v Liverpool City Council* [1982] AC 363, [1981] 2 All ER 385, HL; *Felix v Shiva* [1983] QB 82 at 90-91, [1982] 3 All ER 263 at 266, CA; *Griffiths v Secretary of State for the Environment* [1983] 2 AC 51 at 68-69, [1983] 1 All ER 439 at 446, HL, per Lord Bridge; *Intpro Properties (UK) Ltd v Sauvel* [1983] QB 1019, [1983] 2 All ER 495, CA; *Re Wilson* [1985] AC 750 at 758, [1985] 2 All ER 97 at 102, HL, per Lord Roskill; *Swiss Bank Corp v Brink's-MAT Ltd* [1986] QB 853, [1986] 2 All ER 188; *Swansea City Council v Glass* [1992] QB 844 at 852, [1992] 2 All ER 680 at 686, CA.

3 See eg *C Maurice & Co Ltd v Minister of Labour* [1968] 2 All ER 1030 at 1033, [1968] 1 WLR 1337 at 1345, CA, per Diplock LJ obiter (on appeal [1969] 2 AC 346, [1969] 2 All ER 37, HL); *Prestcold (Central) Ltd v Minister of Labour* [1969] 1 All ER 69, [1969] 1 WLR 89, CA.

4 See eg *McLaughlin v Westgarth* (1906) 75 LJPC 117 at 118 (persons protected from civil action by a private Act enumerated, but this did not mean that persons instructed to convey someone to an asylum were not protected, despite not being among the persons enumerated); *Duke of Newcastle v Morris* (1870) LR 4 HL 661 at 671 (peers' privilege of freedom from arrest).

5 See eg *Dean v Wiesengrund* [1955] 2 QB 120 at 130-131, [1955] 2 All ER 432 at 438-439, CA (reference to legal personal representative included for a transitional reason).

6 See eg *A-G for Northern Ireland's Reference (No 1 of 1975)* [1977] AC 105 at 132, [1976] 2 All ER 937 at 943, HL, per Lord Diplock. As to updating construction see PARA 1473 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(4) THE INTERPRETATIVE CRITERIA/(vii) Linguistic Canons of Construction/1495. Rank principle.

#### **1495. Rank principle.**

It is one of the linguistic canons applicable to the construction of legislation<sup>1</sup> that where a string of items of a certain level is followed by residuary words, it is to be presumed that the residuary words are not intended to include items of a higher rank<sup>2</sup>.

1 As to the nature of these linguistic canons see PARA 1483 ante.

2 From a sense of what is fitting, and also for reasons of common sense, it is assumed that the drafter did not intend to include in residuary words items of higher rank than is possessed by those specifically mentioned in the preceding words. This is a particular application of the ejusdem generis principle: see PARA 1491 ante. Although many examples of the application of the rank principle date from long ago, it remains in use: see eg *Re Brickman's Settlement*, *Brickman v Goddard Trustees (Jersey) Ltd* [1982] 1 All ER 336n; sub nom *Practice Note (Chancery: Deposition)* [1981] 1 WLR 1560 (in the phrase 'an officer or examiner of the court or some other person' in RSC Ord 39 r 4(a) the residuary words do not include judges). See also *Gregory v Fearn* [1953] 2 All ER 559, [1953] 1 WLR 974, CA. As to the commonsense construction rule see PARA 1392 ante.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(5) INTERPRETATION OF LOCAL AND PRIVATE ACTS/1496. Exemptions in local Acts.

## **(5) INTERPRETATION OF LOCAL AND PRIVATE ACTS**

### **1496. Exemptions in local Acts.**

General words of exemption in a local Act<sup>1</sup> will not be construed as giving exemption from taxes imposed by a public general Act<sup>2</sup>.

1 For the meaning of 'local Act' see PARA 1213 ante.

2 *Mersey Docks and Harbour Board v Lucas* (1883) 8 App Cas 891 at 902, HL. For the meaning of 'public general Act' see PARA 1210 ante.

## **UPDATE**

### **1496-1498 Interpretation of Local and Private Acts**

So far as it is possible to do so, local and private Acts must be read and given effect in a way which is compatible with the Convention rights within the meaning of the Human Rights Act 1998: see ss 1, 3; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 104A.1, 104A.2.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(5) INTERPRETATION OF LOCAL AND PRIVATE ACTS/1497. Construction of private Act in favour of public.

### **1497. Construction of private Act in favour of public.**

Where there is any real doubt<sup>1</sup> as to its meaning, a private Act<sup>2</sup> must be construed strictly<sup>3</sup> against the promoters<sup>4</sup>. It follows that, as between the promoters and members of the public, a private Act is to be construed liberally in favour of the public, so that:

- (1) clauses to preserve general rights will be widely interpreted<sup>5</sup>;
- (2) clear words must be used to impose a charge on individuals<sup>6</sup> or to deprive individuals of earning rights<sup>7</sup>;

- (3) there is a presumption, which can only be displaced by clear words, that compensation will be paid for any infringement of private rights<sup>8</sup>; and
- (4) powers to infringe existing rights will not be implied, even though the Act would be inoperative without them<sup>9</sup>, unless it is plain that those rights could not have been intended to coexist with the thing authorised by the Act<sup>10</sup>.

If in a private Act there are words which seem to express an intention to enact something unconnected with or unnecessary for the purpose of the promoters, they will, as far as possible, be construed in such a way as to avoid that effect<sup>11</sup>. A private Act which gives power to interfere with the rights of private property for a particular purpose will not be construed in such a way as to allow the use of such powers for any collateral purpose<sup>12</sup>.

1 As to real doubt see PARA 1373 ante.

2 I.e. a private Act in the widest sense: see PARA 1211 ante.

3 *R v Croke* (1774) 1 Cowp 26; *Kingston-upon-Hull Dock Co v La Marche* (1828) 8 B & C 42; *Scales v Pickering* (1828) 4 Bing 448 at 452; *Parker v Great Western Rly Co* (1844) 7 Scott NR 835 at 870; *Hughes v Chester and Holyhead Rly Co* (1861) 3 De GF & J 352; *Simpson v South Staffordshire Waterworks Co* (1865) 4 De GJ & Sm 679; *A-G v West Hartlepool Improvement Comrs* (1870) LR 10 Eq 152; *Turner v London and South Western Rly Co* (1874) LR 17 Eq 561; *Taylor v St Helens Corpn* (1877) 6 Ch D 264, CA; *Altrincham Union Assessment Committee v Cheshire Lines Committee* (1885) 15 QBD 597 at 603, CA; *Herron v Rathmines and Rathgar Improvement Comrs* [1892] AC 498 at 511, HL; *LCC v A-G* [1902] AC 165, HL; *A-G v Manchester Corpn* [1906] 1 Ch 643; *A-G v Mersey Rly Co* [1907] AC 415, HL; *A-G v West Gloucestershire Water Co* [1909] 2 Ch 338, CA; *Bristol Guardians v Bristol Waterworks Co* [1914] AC 379 at 387, HL; *Harper v Hedges* (1923) 93 LJB 116 at 117, CA. See also *Stourbridge Canal Co v Wheeley* (1831) 2 B & Ad 792; *Stockton and Darlington Rly Co v Barrett* (1844) 11 Cl & Fin 590, HL; *Ex p Eton College* (1850) 20 LJ Ch 1; *Scottish Drainage and Improvement Co v Campbell* (1889) 14 App Cas 139, HL; *Great Northern, Piccadilly and Brompton Rly Co v A-G* [1909] AC 1 at 6; *A-G v Barnet District Gas and Water Co* (1909) 101 LT 651 at 654, 656, CA; *Allen v Gulf Oil Refining Ltd* [1981] AC 1001 at 1015, [1981] 1 All ER 353 at 359, HL, per Lord Edmund-Davies, and at 199 and 363 per Lord Keith of Kinkel (dissenting on other grounds). As to strict construction see PARA 1379 ante.

4 This rule is largely confined to Acts which are not only private in form but are concerned with private rights: *Stewart v River Thames Conservators* [1908] 1 KB 893.

5 *Ex p Eton College* (1850) 20 LJ Ch 1 at 9; *Hammersmith and City Rly Co v Brand* (1869) LR 4 HL 171 at 215; *Clowes v Staffordshire Potteries Waterworks Co* (1872) 8 Ch App 125 at 139; *London and North Western Rly Co v Evans* [1893] 1 Ch 16 at 27, CA.

6 *Gildart v Gladstone* (1809) 11 East 675 at 685; *Scottish Drainage and Improvement Co v Campbell* (1889) 14 App Cas 139 at 149, HL.

7 *Bournemouth-Swanage Motor Road and Ferry Co v Harvey & Sons* [1929] 1 Ch 686 at 697, CA; *Langham v City of London Corpn* [1949] 1 KB 208, [1948] 2 All ER 1018, CA. As to the principle against doubtful penalisation see PARA 1456 ante.

8 *Steele v Midland Rly Co* (1866) 1 Ch App 275 at 281; *A-G v Horner* (1884) 14 QBD 245 at 257, CA; *London and North Western Rly Co v Evans* [1893] 1 Ch 16 at 28, CA. As to the effect of a compensation clause see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 187.

9 *Webb v Manchester and Leeds Rly Co* (1839) 4 My & Cr 116 at 120; *Smith v Bell* (1842) 10 M & W 378 at 391; *Campbell v Lang* (1853) 1 Eq Rep 98, HL; *Barton v Moorhouse* [1935] AC 300, PC.

10 *Allen v Gulf Oil Refining Ltd* [1981] AC 1001, [1981] 1 All ER 353, HL, where a private Act authorising the construction of an oil refinery was held to have impliedly authorised its operation and any nuisance by pollution inevitably resulting from it.

11 *River Wear Comrs v Adamson* (1877) 2 App Cas 743 at 766, HL; *River Lee Navigation Conservators v Button* (1881) 6 App Cas 685; *Taff Vale Rly Co v Davis* [1894] 1 QB 43, CA.

12 *Galloway v London Corpn* (1866) LR 1 HL 34 at 43; *Lyon v Fishmongers' Co* (1876) 1 App Cas 662, HL; and see generally COMPULSORY ACQUISITION OF LAND.

**UPDATE****1496-1498 Interpretation of Local and Private Acts**

So far as it is possible to do so, local and private Acts must be read and given effect in a way which is compatible with the Convention rights within the meaning of the Human Rights Act 1998: see ss 1, 3; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 104A.1, 104A.2.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/5. STATUTORY INTERPRETATION/(5) INTERPRETATION OF LOCAL AND PRIVATE ACTS/1498. Construction of private Act as contract.

**1498. Construction of private Act as contract.**

Although a private Act is construed strictly as between the promoters and the public, it is construed as between the promoters themselves as if it were a contract<sup>1</sup>, that is to say according to what must have been the reasonable intention of the parties<sup>2</sup>.

<sup>1</sup> *Harper v Hedges* (1923) 93 LJKB 116 at 117, 119, CA. See also *Blakemore v Glamorganshire Canal Navigation* (1832) 1 My & K 154 at 162; *Lee v Milner* (1837) 2 Y & C Ex 611 at 618; *London and South Western Rly Co v Flower* (1875) 1 CPD 77 at 85; *Aiton v Stephen* (1876) 1 App Cas 456 at 462, HL; *Countess Rothes v Kirkcaldy Waterworks Comrs* (1882) 7 App Cas 694 at 707, HL; *Milnes v Huddersfield Corpn* (1886) 11 App Cas 511 at 523, HL; *Herron v Rathmines and Rathgar Improvement Comrs* [1892] AC 498 at 501, 523, HL; *Davis & Sons Ltd v Taff Rly Co* [1895] AC 542 at 552, 559, HL.

<sup>2</sup> *Townley v Gibson* (1789) 2 Term Rep 701 at 705; *London and South Western Rly Co v Flower* (1875) 1 CPD 77 at 85. Where certain enactments in a light railway company's order were clearly for the benefit of the public, the fact that they were stated to have been inserted for the protection of another company did not make them a mere contract between the companies to the exclusion of an action brought by the Attorney General for the protection of the public: *A-G v North Eastern Rly Co* [1915] 1 Ch 905, CA.

**UPDATE****1496-1498 Interpretation of Local and Private Acts**

So far as it is possible to do so, local and private Acts must be read and given effect in a way which is compatible with the Convention rights within the meaning of the Human Rights Act 1998: see ss 1, 3; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 104A.1, 104A.2.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(1) GENERAL PROVISIONS/(i) Nature of Subordinate Legislation/1499. In general.

**6. SUBORDINATE LEGISLATION****(1) GENERAL PROVISIONS**

## (i) Nature of Subordinate Legislation

### 1499. In general.

Subordinate legislation is legislation made by a person or body other than the Sovereign in Parliament by virtue of powers conferred either by Act<sup>1</sup> or by legislation which is itself made under statutory powers<sup>2</sup>. It is referred to as delegated legislation in the former case, and sub-delegated legislation in the latter<sup>3</sup>.

Subordinate legislation is so called because it is inferior to and may always be revoked or amended by an Act<sup>4</sup>.

In volume, but not in significance, subordinate legislation greatly exceeds any other type of written law. Much of it is made by executive authorities, the granting of powers to whom was long ago accepted by Parliament as inevitable in cases of national emergency, where speedier remedies are called for than it is itself able to provide<sup>5</sup>, and since there is insufficient parliamentary time for the detailed implementation of each Act to be debated, and indeed it is often not possible to judge in advance precisely what the implementation of an Act will involve, subordinate legislation has become an inevitable part of modern law-making. Much subordinate legislation, on the other hand, is made by independent persons and bodies to whom Parliament has entrusted the responsibility for, or the privilege of, regulating specified matters<sup>6</sup>. Subordinate legislation, if validly made, has the full force and effect of an Act, but it differs from an Act in that its validity, whether as respects form or substance, is normally open to challenge in the courts<sup>7</sup>.

1 As to Acts of Parliament see PARA 1206 ante; and as to the superior authority of Parliament see PARA 1201 ante.

2 The term 'subordinate legislation' does not embrace all legislation other than that enacted by the Sovereign in Parliament, for there remains legislation under prerogative powers of the Crown which, equally with Acts, is original in character: see further CONSTITUTIONAL LAW AND HUMAN RIGHTS. For the meaning of 'subordinate legislation' in the Interpretation Act 1978 see PARA 1232 note 2 ante.

3 For an example of sub-delegated legislation see PARA 1504 post.

4 The term 'revoke' is used for the abrogation of subordinate legislation, instead of 'repeal' as used for Acts. The meaning of 'revoke' is similar; for the meaning of 'repeal' see PARA 1296 ante.

5 See preamble to 31 Hen 8 c 8 (Proclamation by the Crown) (1539) (repealed). As to the functions of the executive see PARA 1325 et seq ante.

6 Under this head fall, eg, byelaws made by local authorities for the good government etc of their areas (see generally LOCAL GOVERNMENT vol 69 (2009) PARAS 553-571), and those made by statutory or other undertakers for regulating the conduct of persons resorting to their undertakings (see eg RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 18-19); also regulations made by the regulators of the privatised utilities (see eg FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1110 et seq); and rules and regulations governing admission to, and the conduct of members of, various professions (see eg LEGAL PROFESSIONS vol 65 (2008) PARA 637 et seq; LEGAL PROFESSIONS vol 66 (2009) PARA 826 et seq).

7 As to the authority of subordinate legislation see further PARA 1510 et seq post; and as to its challenge in the courts see PARA 1520 et seq post.

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to

Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(1) GENERAL PROVISIONS/(i) Nature of Subordinate Legislation/1500. Types of subordinate instrument.

### **1500. Types of subordinate instrument.**

The names given to instruments of a legislative character made in the exercise of delegated powers are various<sup>1</sup>. Chief among them are proclamations, Orders in Council, Orders of Council, orders, regulations, rules, schemes, directions, byelaws and warrants<sup>2</sup>.

Proclamations<sup>3</sup> and Orders in Council are instruments made by the Crown. Most powers conferred on the Crown are required to be exercised by Orders in Council, which are orders expressed to be made by and with the advice of the Privy Council<sup>4</sup>.

Orders of Council are orders made by the Privy Council in pursuance of powers conferred on it alone and, as is normally the case with such powers, expressed to be exercisable by order<sup>5</sup>.

Byelaws are made by local authorities and similar bodies, or by statutory or other undertakers, for regulating the conduct of persons within their areas or resorting to their undertakings<sup>6</sup>, and warrants are prescribed for the exercise of powers of the Treasury with respect to matters such as the fixing of fees and other charges<sup>7</sup>. For the rest, no clear-cut distinctions can be drawn, although it may be said that it is normally the function of schemes to prescribe overall plans for the attainment of objects described in general terms<sup>8</sup> and that directions most frequently embody commands of particular, rather than general, application<sup>9</sup>. Where power is given to prescribe the procedure of a court or tribunal, it is normally framed as a power to make rules<sup>10</sup>, but powers similarly framed will be found to extend to many other matters, and the contents of rules, regulations and orders are, in fact, often indistinguishable in nature<sup>11</sup>.

Individual rules, regulations and byelaws are customarily divided where appropriate into paragraphs and sub-paragraphs. The individual provisions of orders and proclamations are similarly divided, but are themselves referred to as articles, whilst the division of other instruments is into paragraphs in the first instance. Subordinate legislation is included in the term 'enactment', which may refer to the whole or a part of an instrument<sup>12</sup>.

1 For criticisms of the nomenclature see the Report of the Committee on Minister's Powers (1932) (Cmd 4060) at 18; the Report of the Select Committee on Delegated Legislation (HC Paper (1953) no 310-I) PARAS 22, 23; and the Second Report of the Joint Committee on Delegated Legislation (HL Paper (1972-73) no 204, HC Paper (1972-73) no 468) at 38, 48.

2 As to General Synod Measures see PARA 1205 ante.

3 See eg para 1508 note 7 post.

4 Both types of instrument are issued also in the exercise of prerogative powers: see further CONSTITUTIONAL LAW AND HUMAN RIGHTS. Cf the Admiralty Coronership (Abolition) Declaration 1927, SR & O 1927/675 (spent), by which the Crown relinquished its right of appointing an Admiralty coroner: the Coroners (Amendment) Act 1926 s 4(4) (repealed) had provided for the abolition of the office 'if His Majesty is pleased to declare in Council that it is his will' to relinquish the right.

5 Legislative powers conferred on the Privy Council relate in the main to its functions as overseer of certain professions and professional bodies, eg its powers under the Professions Supplementary to Medicine Act 1960 s



2(3); the Veterinary Surgeons Act 1966 ss 3, 25; the Medical Act 1983 s 28; the Dentists Act 1984 s 16; and the Opticians Act 1989 s 31.

6 See PARA 1499 note 6 ante.

7 See eg the power conferred on the Treasury by the National Savings Bank Act 1971 s 11 (amended by the Friendly Societies Act 1992 s 120(1), Sch 21 para 2).

8 See eg the agricultural marketing schemes made under the Agricultural Marketing Act 1958 Pt I (ss 1-33) (as amended; repealed in relation to milk by the Agriculture Act 1993 s 21(1), (2); prospectively repealed in relation to potatoes by s 46 as from the day when s 26(1) comes into force); and AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1082 et seq.

9 However, the distinction does not apply in all cases: see eg the Road Traffic Regulation Act 1984 s 85(2) (amended by the New Roads and Street Works Act 1991 s 168(1), (2), Sch 8 para 62; and by the Road Traffic Act 1991 ss 48, 83, Sch 4 para 30, Sch 8) which imposes a duty on competent authorities to erect traffic signs in accordance with 'general or other directions' given by the appropriate minister.

10 See COURTS; and CIVIL PROCEDURE vol 11 (2009) PARA 9 (Civil Procedure Rules).

11 Thus eg the construction and equipment of passenger ships registered in the United Kingdom is governed by regulations (see the Merchant Shipping Act 1979 s 21 (as amended); and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 599 et seq), as are the construction, weight, equipment and use of motor vehicles and trailers (see the Road Traffic Act 1988 s 41 (as amended); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 260); and the construction and design of certain fishing gear carried by British fishing boats registered in the United Kingdom is regulated by order (see the Sea Fish (Conservation) Act 1967 s 3 (as amended); and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 980).

12 See PARA 1232 et seq ante.

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P); see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

### 1500 Types of subordinate instrument

NOTE 2--Under the Government of Wales Act 2006, the National Assembly for Wales may make Assembly Measures or Acts of the Assembly; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P.

Professions Supplementary to Medicine Act 1960 s 2 repealed: Health Act 1999 s 60(3).

NOTE 5--Professions Supplementary to Medicine Act 1960 s 2 repealed: Health Act 1999 s 60(3). Dentists Act 1984 s 16 amended: SI 2007/3101.

NOTE 8--1993 Act s 21(2) repealed: Statute Law (Repeals) Act 2004.

## (ii) Applicability of Statutory Instruments Legislation

### 1501. The legislation and its antecedents.

Before 1893, no general requirements existed with respect to such matters as the printing and publication of subordinate legislation, although it had become not uncommon by that time for enabling statutes to make provision at any rate for notification, and sometimes for publication, in the London Gazette. In 1893, provision was made for the numbering, printing and sale by the Queen's Printer<sup>1</sup> of statutory rules as defined for this purpose<sup>2</sup>. The Statutory Instruments Act 1946, which came into operation generally on 1 January 1948<sup>3</sup> and which applies to a wider range of instruments, but by no means to all subordinate legislation<sup>4</sup>, (1) repealed the former legislation<sup>5</sup>; (2) together with regulations<sup>6</sup> made under it, made revised provision as to printing and publication<sup>7</sup> and new provision with respect to the effect on criminal proceedings of a failure to publish<sup>8</sup>; and (3) introduced a number of provisions relating to parliamentary control<sup>9</sup>. The 1946 Act is applied to certain rules approved by the General Synod of the Church of England as if they were statutory instruments<sup>10</sup>.

1 As to the Queen's Printer see PARA 1249 ante.

2 I.e. the Rules Publication Act 1893 ss 3, 4 (repealed). Subordinate legislation falling within the requirements was published in a series known as 'Statutory Rules and Orders', which was the name already adopted by the Statute Law Committee in causing from 1890 onwards the publication of annual volumes containing subordinate legislation of the classes defined by the Act as statutory rules. Although the provisions of the Act are no longer operative, the definition of 'statutory rules' is of continuing importance, for it must be referred to in determining the applicability of the Statutory Instruments Act 1946 and regulations made under it to instruments made under Acts passed before the coming into operation of that Act. See further PARA 1503 post.

3 See *ibid* s 10(1); the Statutory Instruments Act 1946 (Commencement) Order 1947, SI 1948/3; and cf the Statutory Instruments Act 1946 s 10(1) proviso, which brought s 9 into operation on the passing of the Act (i.e. 26 March 1946), together with ss 6, 7, so far as relating to Orders in Council under s 9. As to s 9 see PARA 1503 post.

4 For the meaning of 'statutory instrument' see PARA 1503 post; and as to the inclusion in enabling Acts of provision for the application of the Statutory Instruments Act 1946 to instruments made under them which would not fall within the definition see PARA 1504 post.

5 See *ibid* s 12(1), which repealed the Rules Publication Act 1893.

6 I.e. the Statutory Instruments Regulations 1947, SI 1948/1 (amended by SI 1977/641; and by SI 1982/1728).

7 See the Statutory Instruments Act 1946 ss 2, 3(1), 12(2); and the various regulations discussed in conjunction with these provisions in PARA 1506 et seq post.

8 See *ibid* s 3(2); and PARA 1511 post.

9 See *ibid* ss 4-7; and PARA 1514 et seq post.

10 See the Ordination of Women (Financial Provisions) Measure 1993 s 10(8); and the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1994 s 4(6).

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to

Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

### **1501 The legislation and antecedents**

NOTE 6--SI 1948/1 further amended: SI 2006/1927.

NOTE 7--1946 Act ss 2, 3(1) amended: Statutory Instruments (Production and Sale) Act 1996 s 1.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(1) GENERAL PROVISIONS/(ii) Applicability of Statutory Instruments Legislation/1502. Power to make regulations.

### **1502. Power to make regulations.**

The Treasury may, with the concurrence of the Lord Chancellor and the Speaker of the House of Commons, make regulations by statutory instrument<sup>1</sup> which may, in particular:

- (1) provide for the different treatment of instruments which are of the nature of a public Act<sup>2</sup> and of those which are of the nature of a local and personal<sup>3</sup> or private Act<sup>4</sup>;
  - (2) make provision as to the numbering, printing and publication of statutory instruments including provision for postponing the numbering of any such instrument which does not take effect until it has been approved by Parliament, or by the House of Commons, until the instrument has been approved<sup>5</sup>;
  - (3) provide with respect to any classes or descriptions of statutory instrument that they are to be exempt, either altogether or to such extent as may be determined by or under the regulations, from the requirement of being printed and of being sold by the Queen's Printer of Acts of Parliament<sup>6</sup>, or from either of those requirements<sup>7</sup>;
  - (4) determine the classes of cases in which the exercise of a statutory power by any rule-making authority constitutes or does not constitute the making of a statutory rule<sup>8</sup> within the meaning of the previous legislation<sup>9</sup>; and
  - (5) provide for the determination by a person or persons nominated by the Lord Chancellor and the Speaker of the House of Commons of any question:
1. (a) as to the numbering, printing, or publication of any statutory instrument or class or description of such instruments;
  2. (b) whether or to what extent any statutory instrument or class or description of such instruments is exempt under the regulations from any such requirement as is mentioned in head (3) above;
  3. (c) whether any statutory instrument or class or description of such instruments is in the nature of a public Act or of a local and personal or private Act; and
  4. (d) whether the exercise of any power conferred by an Act passed before 1 January 1948<sup>10</sup> is or is not the exercise of a power to make a statutory rule<sup>11</sup>.

Every statutory instrument so made is subject to annulment in pursuance of a resolution of either House of Parliament<sup>12</sup>.

1       Ie for the purposes of the Statutory Instruments Act 1946: see s 8(1). For the meaning of 'statutory instrument' see PARA 1503 post.

2       As to public Acts see PARAS 1208-1210 ante.

3       As to local and personal Acts see PARAS 1213-1214 ante. For examples of statutory instruments having the nature of a personal Act see the Pensions Increase (Pension Schemes for Derek Compton Lewis) Regulations 1995, SI 1995/1681; the Pensions Increase (Pension Scheme for Mr Allan David Green) Regulations 1995, SI 1995/1682.

4       Statutory Instruments Act 1946 s 8(1)(a). As to private Acts see PARA 1211 ante.

5       Ibid s 8(1)(b). See PARA 1506 post.

6       As to the Queen's Printer see PARA 1249 ante.

7       Statutory Instruments Act 1946 s 8(1)(c).

8       Ie such a statutory rule as is referred to in ibid s 1(2): see PARA 1503 post.

9       Ibid s 8(1)(d).

10       Ie the commencement date of the Statutory Instruments Act 1946: see the Statutory Instruments Act 1946 (Commencement) Order 1947, SI 1948/3.

11       Statutory Instruments Act 1946 s 8(1)(e).

12       Ibid s 8(2). In exercise of the power so conferred, the Treasury made the Statutory Instruments Regulations 1947, SI 1948/1 (amended by SI 1977/641; and by SI 1982/1728) which came into operation on 1 January 1948: reg 1(3). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

### 1502 Power to make regulations

TEXT AND NOTES--For 'the Lord Chancellor and the Speaker of the House of Commons' now read 'the Speaker of the House of Commons and the Speaker of the House of Lords': 1946 Act s 8(1) (amended by the Constitutional Reform Act 2005 Sch 6 para 4(3)).

TEXT AND NOTE 1--For 'The Treasury' now read 'The Secretary of State': 1946 Act s 8(1) (amended by the Transfer of Functions (Statutory Instruments) Order 2006, SI 2006/1927).

NOTE 1--1946 Act s 8(1) amended: Statutory Instruments (Production and Sale) Act 1996 s 1.

TEXT AND NOTE 6--For 'sold by the Queen's Printer' read 'sold by or under the authority of the Queen's Printer: 1946 Act s 8(1)(c); 1996 Act s 1.

NOTE 7--1946 Act s 8(1)(c) amended: 1996 Act s 1.

NOTE 12--SI 1948/1 further amended: SI 2006/1927.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(1) GENERAL PROVISIONS/(ii) Applicability of Statutory Instruments Legislation/1503. Meaning of 'statutory instrument'.

### **1503. Meaning of 'statutory instrument'.**

For the purpose of determining whether a particular document is a statutory instrument, a distinction is drawn between (1) documents made in the exercise of powers conferred either by the Statutory Instruments Act 1946 or by Acts passed since its commencement<sup>1</sup>; and (2) documents made in the exercise of powers conferred by earlier Acts.

In relation to documents falling within head (1) above, the position is straightforward. Such a document is to be known as 'a statutory instrument' if the power is a power to make, confirm or approve orders, rules, regulations or other subordinate legislation, is conferred either on Her Majesty in Council or on a minister of the Crown<sup>2</sup>, and is expressed to be exercisable by Order in Council in the former case<sup>3</sup> and by statutory instrument in the latter<sup>4</sup>.

So far as documents falling within head (2) above are concerned, the position is more complicated, but the underlying principle is that, save as otherwise provided by regulations, a document is to be known as 'a statutory instrument' if the power which the document exercises was a power to make statutory rules within the meaning of the legislation formerly in force, conferred on a rule-making authority within the meaning of that legislation<sup>5</sup>. Regulations may determine the classes of case in which the exercise of a statutory power by any such authority constitutes, or does not constitute, the making of a statutory rule<sup>6</sup>, and the regulations currently in force provide that, in general, every document made since 1947 by any rule-making authority in the exercise of a power conferred on it by or under an Act passed before 1948 constitutes a statutory rule provided that it is of a legislative, and not of an executive, character<sup>7</sup>. Any question whether the particular exercise of any power does or does not constitute the making of a statutory rule is to be referred to, and determined by, the Statutory Instruments Reference Committee<sup>8</sup>. Regulations may also provide for the exclusion of any class from the expression 'statutory instruments'<sup>9</sup>. Finally, where the exercise of any power to confirm or approve subordinate legislation conferred on a minister of the Crown by an Act passed before 1948 did not constitute the making of a statutory rule, an Order in Council may direct that any document made in exercise of the power after a date specified in the order is nevertheless to be known as a statutory instrument and the provisions of the Statutory Instruments Act 1946 will apply to it accordingly<sup>10</sup>.

1       Ie 1 January 1948: see PARA 1501 ante.

2       Any power to make, confirm or approve orders, rules, regulations or other subordinate legislation which is conferred on the Treasury, the Board of Trade or any other government department is to be deemed for the purposes of the Statutory Instruments Act 1946 to be conferred on the minister in charge of that department: s 11(1) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt II). If any question arises whether any board, commissioners or other body on whom any such power is conferred is a government department within the meaning of this provision, or what minister of the Crown is in charge of them, the question must be referred to, and determined by, the Treasury: Statutory Instruments Act 1946 s 11(2). The Statutory Instruments Act 1946 is applied by a number of Acts as if the order-making authority were

a minister of the Crown: see eg the Supreme Court Act 1981 s 127(3); the Electricity Act 1989 s 1(5), Sch 1 para 5(2); the Friendly Societies Act 1992 s 1(9), Sch 1 para 11.

3 Statutory Instruments Act 1946 s 1(1)(a).

4 Ibid s 1(1)(b).

5 Ibid s 1(2). The legislation referred to is the Rules Publication Act 1893 (repealed). For the purposes of that Act, 'statutory rules' meant rules, regulations or byelaws made under an Act of Parliament and either (1) relating to certain specified matters, namely any court in the United Kingdom, the procedure, practice, costs or fees in any such court, and any fees or matters applying generally throughout England, Scotland or Ireland; or (2) made by Her Majesty in Council, or by the Judicial Committee, the Treasury, the Lord Chancellor, a Secretary of State, the Admiralty, the Board of Trade or any other government department: s 4 (repealed).

6 Statutory Instruments Act 1946 s 8(1)(d). Regulations under the 1946 Act are made by the Treasury with the concurrence of the Lord Chancellor and the Speaker of the House of Commons, and are required to be contained in a statutory instrument (s 8(1)), and a statutory instrument containing any such regulations is subject to annulment in pursuance of a resolution of either House of Parliament (s 8(2)). As to annulment see PARA 1516 post.

7 Statutory Instruments Regulations 1947, SI 1948/1, reg 2(1)(a). A document also constitutes a statutory rule if it is one which, by virtue of any enactment other than the Rules Publication Act 1893 (repealed), would be subject to s 3 (which required the printing and publication of statutory rules) if that section had not been repealed: Statutory Instruments Regulations 1947 reg 2(1)(b). The confirmation or approval by a rule-making authority of any subordinate legislation made by a person not being a rule-making authority does not, however, constitute the making of a statutory rule unless required to be effected by Order in Council or order: reg 2(2). As to confirmations and approvals see the text and note 10 infra.

8 See ibid reg 11(4)(c), made under the Statutory Instruments Act 1946 s 8(1)(e)(iv). As to the Statutory Instruments Reference Committee see PARA 1505 post.

9 Statutory Instruments Act 1946 s 8(1)(d). See also the Statutory Instruments Regulations 1947 reg 2(3). The documents excluded are any document applying only to named persons or premises, and not required to be laid before, or confirmed or approved by, either House of Parliament (reg 2(3)(a)); any Order in Council confirming or approving subordinate legislation in the nature of a local and personal or private Act, where the minister responsible for preparing the draft of the Order is the Lord President of the Council (regs 1(2)(b)(i), 2(3)(b)); and documents made under certain enactments scheduled to the regulations (reg 2(3)(c), Schedule (substituted by SI 1982/1728)). As to confirmations and approvals see further note 7 supra; and the text and note 10 infra.

10 Statutory Instruments Act 1946 s 9(1). As to confirmations and approvals see also notes 7, 9 supra. Orders under s 9 must be laid before Parliament in draft: s 9(3). As to the effect of such a requirement see PARA 1517 post. By virtue of s 9, and the Statutory Instruments (Confirmatory Powers) Order 1947, SI 1948/2, documents made by ministers of the Crown under powers conferred by Acts passed before 1948 and confirming or approving subordinate legislation not made by a rule-making authority, being documents required to be laid before Parliament or the House of Commons, are to be known as 'statutory instruments': see arts 1, 3.

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

### 1503 Meaning of 'statutory instrument'

TEXT AND NOTES 2-4--A document is also to be known as a 'statutory instrument' if the power is conferred on the Welsh Ministers and is expressed to be exercisable by

statutory instrument: 1946 Act s 1(1A) (added by the Government of Wales Act 2006 Sch 10 para 2).

NOTE 2--Supreme Court Act 1981 (now Senior Courts Act 1981) s 127(3) repealed: Constitutional Reform Act 2005 Sch 1 para 12(3), Sch 18 Pt 1.

NOTE 6--For 'the Treasury' now read 'the Secretary of State': 1946 Act s 8(1) (amended by the Transfer of Functions (Statutory Instruments) Order 2006, SI 2006/1927).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(1) GENERAL PROVISIONS/(ii) Applicability of Statutory Instruments Legislation/1504. Express application of the legislation to other documents.

#### **1504. Express application of the legislation to other documents.**

Acts passed since 1947 and authorising the making of documents which are not statutory instruments<sup>1</sup> frequently provide expressly for the documents in question to be treated as a statutory instrument, either for all purposes or for some purposes only<sup>2</sup>. Provisions of such a nature have been made in respect of sub-delegated legislation<sup>3</sup>, the failure to provide for the publication of the sub-delegated legislation<sup>4</sup> having been the subject of severe judicial criticism<sup>5</sup>.

1 For the meaning of 'statutory instrument' see PARA 1503 ante. The Statutory Instruments Act 1946 came into operation generally on 1 January 1948: see PARA 1501 ante.

2 See eg the House of Commons Members' Fund Act 1948 s 3(3) (application of the Statutory Instruments Act 1946 s 2, which relates to printing, publication and citation, to resolutions of the House of Commons relating to the fund). See further PARAS 1506, 1513 post.

3 See eg the Motor Vehicles (International Circulation) Act 1952 s 1(3), which authorises the delegation of regulation-making powers by Orders in Council made under s 1(1), and provides for the application of the Statutory Instruments Act 1946 to such regulations.

4 As to legislation made by virtue of powers conferred under statutes passed before 1948 see, however, the Statutory Instruments Act 1946 s 8(1)(d); the Statutory Instruments Regulations 1947, SI 1948/1, reg 2(1) (a); and PARA 1503 ante.

5 See *Blackpool Corp'n v Locker* [1948] 1 KB 349 at 369, [1948] 1 All ER 85 at 87, CA. Cf *Lewisham Metropolitan Borough and Town Clerk v Roberts* [1949] 2 KB 608 at 622, 630, [1949] 1 All ER 815 at 824, 829, CA, where it was doubted whether the document giving rise to the criticism was in fact legislative in character.

### **UPDATE**

#### **1499-1526 Subordinate Legislation**

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

#### **1504 Express application of the legislation to other documents**

NOTE 2--1946 Act s 2 amended: Statutory Instruments (Production and Sale) Act 1996 s 1.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(1) GENERAL PROVISIONS/(iii) Statutory Instruments Reference Committee/1505. The Statutory Instruments Reference Committee.

### **(iii) Statutory Instruments Reference Committee**

#### **1505. The Statutory Instruments Reference Committee.**

The Statutory Instruments Reference Committee consists of two or more persons nominated by the Lord Chancellor and the Speaker of the House of Commons<sup>1</sup>. Its quorum is determined by the Lord Chancellor and the Speaker, but subject to that the committee may regulate its own procedure<sup>2</sup>.

Where the responsible authority<sup>3</sup> gives any exemption certificate<sup>4</sup> in respect of a statutory instrument, that authority must notify the committee; and the committee may, if it considers that the statutory requirements with respect to the printing and sale of copies<sup>5</sup> ought to be complied with, direct that the instrument is not to be exempt from those requirements<sup>6</sup>.

It is the committee's duty to determine any question referred to it:

- (1) as to the numbering, printing or publication of any statutory instrument or class or description of such instruments<sup>7</sup>;
- (2) whether any statutory instrument of any class or description of statutory instruments is in the nature of a public general Act<sup>8</sup> or of a local and personal<sup>9</sup> or private Act<sup>10</sup>; and
- (3) whether certain documents<sup>11</sup> do or do not constitute<sup>12</sup> statutory rules<sup>13</sup>.

1 Statutory Instruments Regulations 1947, SI 1948/1, reg 11(1).

2 Ibid reg 11(2).

3 In relation to an Order in Council, 'responsible authority' means the minister responsible for the preparation of the draft of the order and, in relation to any other instrument, means the minister by whom it is made: *ibid* reg 1(2)(b). For these purposes, references to a minister include references to the Treasury, the Admiralty, the Board of Trade, and any other government department, and to any authority making a document which, by virtue of reg 2 (see *PARA 1503 ante*), is such a statutory rule as is referred to in the Statutory Instruments Act 1946 s 1(2) (see *PARA 1503 ante*): Statutory Instruments Regulations 1947 reg 1(2)(a), (b).

4 *Ie* under *ibid* regs 6 or 7: see *PARA 1506 post*.

5 *Ie* the requirements of the Statutory Instruments Act 1946 s 2(1): see *PARA 1506 post*.

6 Statutory Instruments Regulations 1947 reg 11(3). The committee may direct that the instruments is not to be exempt from the statutory requirements either in whole or only so far as concerns the document specified in the certificate: reg 11(3). It may, however, direct that the notification required need not be given in respect of any specified class of instrument: reg 11(3) proviso.

7 *Ibid* reg 11(4)(a). See further *PARA 1506 post*.

8 As to public general Acts see *PARA 1210 ante*.

9 As to local and personal Acts see *PARAS 1213-1214 ante*.



10 Statutory Instruments Regulations 1947 reg 11(4)(b). As to private Acts see PARA 1211 ante.

11 le any document whereby is exercised after 1947 any power conferred by or under any Act of Parliament passed before 1 January 1948: *ibid* reg 11(4)(c).

12 le constitute such a statutory rule as is referred to in the Statutory Instruments Act 1946 s 1(2): Statutory Instruments Regulations 1947 reg 11(4)(c).

13 *Ibid* reg 11(4)(c).

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

### 1505 The Statutory Instruments Reference Committee

TEXT AND NOTES 1, 2--1947 Regulations reg 11(1), (2) amended: Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No 3) Order 2006, SI 2006/1640.

NOTE 5--1946 Act s 2(1) amended: Statutory Instruments (Production and Sale) Act 1996 s 1.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(1) GENERAL PROVISIONS/(iv) Printing and Publication/1506. Requirements as to individual documents.

## (iv) Printing and Publication

### 1506. Requirements as to individual documents.

So far as documents, other than statutory instruments, made under an Act are concerned, publication is a matter for which provision will be found, if at all, in the enabling Act concerned or in the code of which that Act forms part. For statutory instruments, on the other hand, as for statutory rules from 1893 until 1948<sup>1</sup>, detailed provisions exist with respect to their numbering, printing and sale by the Queen's Printer<sup>2</sup>. Every statutory instrument is required to be sent to the Queen's Printer for numbering immediately after it is made<sup>3</sup>. The general principle to be observed by him is that instruments are to be allocated to the series of the calendar year in which they are made, and to be numbered in that series consecutively, and as nearly as may be in the order in which they are received<sup>4</sup>, and the Queen's Printer is usually required to print and sell copies of the instrument as soon as possible<sup>5</sup>. Regulations may, however, provide that any class or description of statutory instrument is to be exempt, either altogether or to such extent as may be determined by or under the regulations, from the requirements of being printed and being sold or either of those requirements<sup>6</sup>, and exemptions exist for local instruments<sup>7</sup>, general instruments which are regularly published in some other way<sup>8</sup>, temporary instruments<sup>9</sup>, certain schedules and other documents identified by, or referred to in, statutory

instruments<sup>10</sup>, and confidential instruments<sup>11</sup>. Failure to comply with the requirements as to printing and sale does not invalidate the instrument<sup>12</sup>.

Where any enactment, whenever passed, requires any statutory instrument to be published or notified in the London, Edinburgh or Belfast Gazette, the publication in the Gazette of a notice stating that the instrument has been made, and specifying the place where copies of it may be purchased, is sufficient compliance with that requirement<sup>13</sup>.

1 See PARA 1501 ante.

2 As to the Queen's Printer see PARA 1249 ante.

3 Statutory Instruments Act 1946 s 2(1).

4 Statutory Instruments Regulations 1947, SI 1948/1, reg 3, made under the Statutory Instruments Act 1946 s 8(1)(b). Where, however, any such instrument (1) will not take effect unless confirmed or approved by Parliament or the House of Commons; or (2) is, or may become, subject to special parliamentary procedure (see PARLIAMENT vol 34 (Reissue) PARA 913 (provisional order procedure) and PARAS 912-927 (special parliamentary procedure)), the instrument may be allocated and numbered as if it had been made and received on the date on which the responsible authority notifies the Queen's Printer that the instrument has become operative or will become operative: Statutory Instruments Regulations 1947 reg 3 proviso. Statutory instruments made before the commencement of the Statutory Instruments Act 1946 (see PARA 1501 ante) were allocated to the series of the year of commencement: Statutory Instruments Regulations 1947 reg 3 second proviso. For the meaning of 'responsible authority' see PARA 1505 note 3 ante. The questions which may be referred for determination to the Statutory Instruments Reference Committee (see PARA 1505 ante) include any question as to the numbering of statutory instruments: see the Statutory Instruments Act 1946 s 8(1)(e)(i); the Statutory Instruments Regulations 1947 reg 11(4)(a).

5 Statutory Instruments Act 1946 s 2(1).

6 Ibid s 8(1)(c). Exemptions may also be made by Acts passed after the commencement of the Statutory Instruments Act 1946 (ie 1 January 1948): see s 2(1).

7 See the Statutory Instruments Regulations 1947 reg 5. Local instruments are exempt from both requirements unless the Statutory Instruments Reference Committee otherwise directs in a particular case: reg 5(a). As to that committee, to whom there may be referred for determination any question as to the printing or publication of statutory instruments (Statutory Instruments Act 1946 s 8(1)(e)(i), (ii); Statutory Instruments Regulations 1947 reg 11(4)(a)), see PARA 1505 ante. For the purpose of the regulations, instruments are to be classified as local or general according to their subject matter: reg 4(1). Unless there are special reasons to the contrary in a particular case, they are to be placed in the former category if in the nature of local and personal or private Acts, and in the latter if in the nature of public general Acts (as to which distinctions see PARA 1208 et seq ante): reg 4(2). Every instrument sent to the Queen's Printer is to be certified as local or general by the responsible authority and is to be classified in accordance with the certification unless it is otherwise directed by the Statutory Instruments Reference Committee: see reg 4(3). Any question whether an instrument is in the nature of a public general Act or of a local and personal or private Act may be referred to the Statutory Instruments Reference Committee: see the Statutory Instruments Act 1946 s 8(1)(e)(iii); and the Statutory Instruments Regulations 1947 reg 11(4)(b). However, the responsible authority may request the Queen's Printer to comply with the requirements as to printing and sale notwithstanding that the authority has certified an instrument as local: reg 5 proviso.

8 See ibid reg 5(b). General instruments are exempt from both requirements if they are certified by the responsible authority to be of a class of documents which is or will be otherwise regularly printed as a series, and made available to the persons affected by them: reg 5. As to the classification of instruments see note 7 supra.

9 See ibid reg 6. If the responsible authority considers, and so certifies on sending the instrument to the Queen's Printer, that the printing and sale of copies of an instrument is unnecessary having regard to the brevity of the period during which it will remain in force and to any other steps taken or to be taken for bringing its substance to public notice, the instrument is exempt from the requirements of printing and sale unless the Statutory Instruments Reference Committee otherwise directs: reg 6. The responsible authority must notify the committee of the giving of any such certificate unless the instrument is of a class with respect to which the committee has directed that notification need not be given: reg 11(3). See also note 10 infra.

10 See ibid reg 7. If the responsible authority considers, and so certifies on sending the instrument to the Queen's Printer, that the printing and sale of any schedule or other document which is identified by, or referred to in, a statutory instrument is unnecessary or undesirable having regard to its nature or bulk, and to any other

steps taken or to be taken for bringing its substance to public notice, the instrument is exempt from the requirements of printing and sale so far as concerns the document specified in the certificate unless the Statutory Instruments Reference Committee otherwise directs: reg 7. Regulation 11(3) (see note 9 supra) applies with respect to certificates given under reg 7. A letter signed by an officer of the responsible authority and stating that a certificate has been given does not itself constitute a certificate: see *Defiant Cycle Co Ltd v Newell* [1953] 2 All ER 38, [1953] 1 WLR 826, DC.

11 See the Statutory Instruments Regulations 1947 reg 8. If the responsible authority considers, and so certifies on sending the instrument to the Queen's Printer, that the printing and sale of copies of an instrument before its commencement would be contrary to the public interest, the instrument is exempt from the requirements of printing and sale until that time: reg 8. If, however, at any time after the instrument has been so certified and before it has come into operation it appears to the responsible authority that printing and sale would no longer be contrary to the public interest he must notify the Queen's Printer to that effect, whereupon the exemption ceases to apply: reg 8 proviso.

12 *R v Sheer Metalcraft Ltd* [1954] 1 QB 586, [1954] 1 All ER 542.

13 Statutory Instruments Act 1946 s 12(2).

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

### 1506 Requirements as to individual documents

NOTES 3, 5, 6--1946 Act s 2(1) amended: Statutory Instruments (Production and Sale) Act 1996 s 1.

NOTE 6--1946 Act s 8(1)(c) amended: 1996 Act s 1.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(1) GENERAL PROVISIONS/(iv) Printing and Publication/1507. Statutory Instruments Issue List.

### 1507. Statutory Instruments Issue List.

Regulations<sup>1</sup> must make provision for the publication by Her Majesty's Stationery Office (HMSO) of lists showing the date upon which every statutory instrument printed and sold by the Queen's Printer<sup>2</sup> was first issued by that office<sup>3</sup>. That office is required to publish from time to time a list, known as the Statutory Instruments Issue List, showing the serial number, short title and date of issue of every statutory instrument issued by it for the first time during the period to which the list relates<sup>4</sup>. In any legal proceedings, a copy of any list published by HMSO and purporting to bear the imprint of the Queen's Printer is to be received in evidence as a true copy, and an entry in it is to be conclusive evidence of the date on which any statutory instrument was first issued by HMSO<sup>5</sup>.

1 The regulations made for the purposes of the Statutory Instruments Act 1946: s 3(1). As to the power to make regulations see s 8; and PARA 1502 ante.

2 The Controller of Her Majesty's Stationery Office is in practice also the Queen's Printer: see PARA 1249 ante.

3 Statutory Instruments Act 1946 s 3(1).

4 Statutory Instruments Regulations 1947, SI 1948/1, reg 9. Such lists are normally published daily from Monday to Friday.

5 Statutory Instruments Act 1946 s 3(1). The significance of these provisions is to be found in connection with the defence, available in certain circumstances to a person proceeded against for contravention of a statutory instrument, that the instrument had not been issued by Her Majesty's Stationery Office at the time of the alleged contravention: see PARA 1511 post. As to the incorporation of an issue list in the annual volumes of statutory instruments see PARA 1508 note 5 post. By virtue of the Documentary Evidence Act 1882 s 2, the imprint of Her Majesty's Stationery Office, which such lists in practice bear, is of the same effect as the imprint of the Queen's Printer.

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

### 1507 Statutory Instruments Issue List

NOTES 1, 3--1946 Act s 3(1) amended: Statutory Instruments (Production and Sale) Act 1996 s 1.

TEXT AND NOTE 2--For 'sold by the Queen's Printer' read 'sold by or under the authority of the Queen's Printer': 1946 Act s 3(1); 1996 Act s 1.

TEXT AND NOTE 5--Words 'and purporting to bear the imprint of the Queen's Printer' omitted: 1946 Act s 3(1); 1996 Act s 1.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(1) GENERAL PROVISIONS/(iv) Printing and Publication/1508. Annual editions of statutory instruments.

### 1508. Annual editions of statutory instruments.

It is the duty of the Treasury to cause to be prepared at the end of each calendar year an edition of statutory instruments, and it is the duty of the Queen's Printer and Her Majesty's Stationery Office respectively to print and publish any edition so prepared<sup>1</sup>. Subject to certain exceptions<sup>2</sup>, each edition must contain copies of all statutory instruments allocated to that or any previous year which, not having been included in any previous edition, have by the time that the edition in question is completed been printed in compliance<sup>3</sup> with the Statutory Instruments Act 1946<sup>4</sup>. It must contain also an annual numerical and issue list of statutory instruments<sup>5</sup>, a classified list of local instruments, tables showing the effects of the instruments

included in that edition on existing Acts and existing statutory rules and statutory instruments, and an index<sup>6</sup>.

It is the practice to include also in each edition an appendix containing copies of certain instruments which are not statutory instruments, for example proclamations, Orders in Council and letters patent made under prerogative powers and relating to the constitutions or coinage of certain overseas territories or to appeals to the Judicial Committee of the Privy Council<sup>7</sup>.

1 Statutory Instruments Regulations 1947, SI 1948/1, reg 10 (amended by SI 1977/641), made under the Statutory Instruments Act 1946 s 8(1) (see PARA 1503 ante). The annual editions of statutory instruments continue the annual volumes of statutory rules and orders published between 1890 and 1893 under the direction of the Statute Law Committee, and from then until 1948 under Regulations dated 9 August 1894, SR & O 1894/734, reg 9, made under the Rules Publication Act 1893 s 3 (repealed). See further PARA 1501 note 2 ante.

2 The instruments excepted are instruments which have ceased to be in force at the time the edition is completed, and local instruments (see PARA 1506 note 7 ante): Statutory Instruments Regulations 1947 reg 10(1)(a) proviso (substituted by SI 1977/641). Orders in Council made under the Northern Ireland Act 1974 s 1(3), Sch 1 para 1 are omitted pursuant to Sch 1 para 1(8), but are included in the annual numerical and issue list: see note 5 infra.

3 In compliance with the Statutory Instruments Act 1946 s 2(1): see PARA 1506 ante.

4 Statutory Instruments Regulations 1947 reg 10(1)(a).

5 The list must show (1) the serial numbers of all statutory instruments which were made during the calendar year in question, other than instruments which are exempt from the requirements of the Statutory Instruments Act 1946 s 2(1) as to printing and sale by reason of their being local instruments, or instruments with respect to which a certificate is in force under the Statutory Instruments Regulations 1947 reg 8 (exemption from printing and sale if contrary to public interest: see PARA 1506 ante); and (2) the serial numbers and respective dates of issue of all statutory instruments, other than local instruments, which were first issued by Her Majesty's Stationery Office during that year: reg 10(1)(b) (amended by SI 1982/1728). So much of the list as relates to dates of issue is deemed to be published in accordance with the Statutory Instruments Act 1946 s 3(1) (see PARA 1507 ante): Statutory Instruments Regulations 1947 reg 10(2).

6 Ibid reg 10(1).

7 Proclamations under the Coinage Act 1971 s 3(e) may also be included: see eg the Proclamation of 13 February 1980 (calling in all coins of the denomination of 2.5 pence) printed at the end of the 1980 Annual Edn Pt I s 2.

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

### 1508 Annual editions of statutory instruments

TEXT AND NOTE 1--For 'the Treasury' now read 'the Secretary of State': SI 1948/1 reg 10 (amended by SI 2006/1927).

NOTE 2--Northern Ireland Act 1974 repealed: Northern Ireland Act 1998 s 100(2), Sch 15.

NOTES 3, 5--1946 Act s 2(1) amended: Statutory Instruments (Production and Sale) Act 1996 s 1.

NOTE 5--1946 Act s 3(1) amended: 1996 Act s 1.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(1) GENERAL PROVISIONS/(iv) Printing and Publication/1509. Other official publications.

### **1509. Other official publications.**

Publications under the supervision of the Lord Chancellor, assisted by the advisory committee on statute law<sup>1</sup>, include the Index to Government Orders which is normally published at the end of every other year<sup>2</sup> and which lists under subject headings all enabling provisions then in operation, and all existing instruments made under them and classified as general<sup>3</sup>.

1 See PARA 1251 ante.

2 Supplements are provided for the years in which no index is published.

3 Some instruments which are not statutory instruments, eg instruments made under the royal prerogative, are also included. As to the distinction between general instruments and local instruments see PARA 1506 note 7 ante. It was formerly the practice also to publish periodic editions of the entire body of general instruments currently in force. The last of these comprised in 24 volumes all such instruments in force at the end of 1948 (ie SR & O Revised 1948).

## **UPDATE**

### **1499-1526 Subordinate Legislation**

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(1) GENERAL PROVISIONS/(v) Authority and Knowledge/1510. Authority equal to that of Act.

## **(v) Authority and Knowledge**

### **1510. Authority equal to that of Act.**

If validly made, subordinate legislation has the full force and effect of an Act<sup>1</sup>, whether or not the Act under which it is made provides expressly that it is to have effect as if enacted in it<sup>2</sup>. Thus, if an instrument made in the exercise of delegated powers directs or forbids the doing of

a particular thing, then, in the absence of provision to the contrary, the result of a breach is the same as if the command or prohibition has been contained in the enabling Act itself<sup>3</sup>. Similarly, if such an instrument authorises or requires the doing of any act, the principles to be applied in determining whether a person injured by the act has any right of action in respect of the injury are no different from those applicable where damage results from an act done under the direct authority of an Act<sup>4</sup>.

1 See *Dale's Case, Enraght's Case*(1881) 6 QBD 376 at 398, CA, per Lord Coleridge CJ; *Re Langlois and Biden*[1891] 1 QB 349 at 355, CA, per Lord Esher MR; *Kruse v Johnson*[1898] 2 QB 91 at 96 per Russell CJ; *Re Macartney, Brookhouse v Barman* (1920) 36 TLR 394 per PO Lawrence J. As to the effect of an Act see PARA 1206 ante.

2 *Institute of Patent Agents v Lockwood*[1894] AC 347 at 360-361, HL, per Lord Herschell. As to the effect of such a provision see PARA 1428 ante.

3 See *R v Walker*(1875) LR 10 QB 355 at 358 per Lush J (following *R v Harris* (1791) 4 Term Rep 202, and holding that disobedience to an order to which no express sanction attached constituted an indictable misdemeanour); *Willingale v Norris*[1909] 1 KB 57 at 63, DC, per Lord Alverstone CJ, and at 66 per Bigham J, where a penalty imposed by one Act for breach of any of the provisions was held applicable to breach of regulations made under an earlier Act with which it was to be construed as one. See also *Rathbone v Bundock*[1962] 2 QB 260, [1962] 2 All ER 257, DC, where the question was whether contravention of regulations deemed to have been made under the Road Traffic Act 1960 Pt I (ss 1-80) (repealed), constituted an offence under Pt I, and it was held that for the purposes of obedience and disobedience the regulations were to be regarded as a provision of Pt I and such a contravention constituted an offence under that Act. Cf *United Dairies (London) Ltd v Beckenham Corp*n[1963] 1 QB 434 at 448, [1961] 1 All ER 579 at 584, DC, per Parker CJ.

4 See *National Telephone Co v Baker*[1893] 2 Ch 186 at 203 per Kekewich J. As to those principles see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 189; NEGLIGENCE vol 78 (2010) PARA 17.

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(1) GENERAL PROVISIONS/(v) Authority and Knowledge/1511. Ignorance of statutory instrument.

#### 1511. Ignorance of statutory instrument.

So far as statutory obligations are concerned, whilst there are no exceptions to the principle that ignorance of the law does not excuse a failure to observe it<sup>1</sup>, the principle is relaxed in relation to obligations imposed by statutory instruments printed and sold by the Queen's Printer<sup>2</sup>. In any proceedings for an offence committed by contravening any such instrument, it is a defence to prove that the instrument had not been issued by Her Majesty's Stationery Office at the date of the alleged contravention unless it is proved that at that date reasonable steps had been taken for the purpose of bringing the purport of the instrument to the notice of the public, or of persons likely to be affected by it, or of the person charged<sup>3</sup>.

1 See PARA 1324 ante.

2 As to statutory instruments printed and sold by the Queen's Printer see PARA 1506 ante.

3 Statutory Instruments Act 1946 s 3(2). As to the method of proving the date on which any statutory instrument was first issued see PARA 1507 ante; and for an unusual instance of the operation of the defence see *Defiant Cycle Co Ltd v Newell* [1953] 2 All ER 38, [1953] 1 WLR 826, DC, where there was a contravention of an instrument prohibiting the sale of iron and steel at prices exceeding those specified in schedules which had not been issued, being mistakenly believed (see PARA 1506 note 10 ante) to have been exempted from the statutory requirements as to printing and sale. In *R v Sheer Metalcraft Ltd* [1954] 1 QB 586, [1954] 1 All ER 542, the defence failed, the prosecution having proved that the defendants had been notified of the purport of the instrument concerned. As to the wider principle that subordinate legislation for which no commencement date is specified does not come into operation until made public see PARA 1523 post. Save in so far as it expressly provides to the contrary, nothing in the Statutory Instruments Act 1946 s 3 affects any enactment or rule of law relating to the time at which any statutory instrument comes into operation: s 3(3).

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

### 1511 Ignorance of statutory instrument

TEXT AND NOTE 2--For 'sold by the Queen's Printer' read 'sold by or under the authority of the Queen's Printer': 1946 Act s 3(2); Statutory Instruments (Production and Sale) Act 1996 s 1.

TEXT AND NOTE 3--For 'issued by' read 'issued by or under due authority of': 1946 Act s 3(2); 1996 Act s 1.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(1) GENERAL PROVISIONS/(vi) Proof and Citation/1512. Proof.

## (vi) Proof and Citation

### 1512. Proof.

Since there is no provision requiring judicial notice to be taken of it, subordinate legislation must be pleaded and proved by the party seeking to rely on it<sup>1</sup>. The method of its proof depends, in the first instance, on any special provision which may be made with respect to legislation made in exercise of the particular power concerned and, subject thereto, on certain provisions of general application<sup>2</sup>. Thus, for example, regulations made by a Secretary of State can be proved by producing the text printed in the relevant annual edition of statutory instruments<sup>3</sup>.



1 As to judicial notice of subordinate legislation see PARA 1352 ante.

2 See generally CIVIL PROCEDURE vol 11 (2009) PARAS 890-895. As to proof of byelaws see eg the Local Government Act 1972 s 238 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 568. Formal proof of a well-known instrument should not be insisted upon: *Palastanga v Solman* (1962) 106 Sol Jo 176, DC.

3 See the Documentary Evidence Act 1868 s 2(2); the Documentary Evidence Act 1882 s 2; and CIVIL PROCEDURE vol 11 (2009) PARAS 889-894. As to the annual editions see PARA 1508 ante.

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(1) GENERAL PROVISIONS/(vi) Proof and Citation/1513. Citation.

### 1513. Citation.

There is no enactment sanctioning generally the citation by short titles of instruments made in the exercise of delegated powers<sup>1</sup>, but such instruments normally, and statutory instruments always, contain provision for their citation in that manner; and they frequently provide also for their citation with other instruments by collective titles<sup>2</sup>.

Statutory instruments are numbered by the Queen's Printer and, for that purpose, are allocated to a calendar year series<sup>3</sup>. Without prejudice to any other mode of citation, they may always be cited by the number and year in question<sup>4</sup>.

1 As to the citation of Acts see PARA 1253 et seq ante.

2 As to collective titles for Acts see PARA 1254 ante.

3 See PARA 1506 ante.

4 See the Statutory Instruments Act 1946 s 2(2), replacing provisions of a similar nature made with respect to statutory rules and orders by the Rules Publication Act 1893 s 3(2) (repealed).

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(2) PARLIAMENTARY CONTROL/1514. In general.

## **(2) PARLIAMENTARY CONTROL**

### **1514. In general.**

The exercise of legislative authority by subordinate bodies is always subject to the restraint deriving from Parliament's ability to take away powers that it confers; and, less drastically, Parliament may at any time revoke by Act a particular instrument made under any such power. However, enabling Acts frequently contain provisions intended to increase the effectiveness of parliamentary control over the legislation they authorise<sup>1</sup>, and provisions of this nature may be classified as:

- (1) provisions which ensure that copies of instruments are brought before Parliament, but do nothing to affect the position in law that parliamentary disapproval of any particular instrument can be made effective only by legislating for its revocation<sup>2</sup>;
- (2) provisions under which instruments must be brought before Parliament and, if found objectionable, may be revoked without need of legislation in that behalf (known as the 'negative procedure')<sup>3</sup>; and
- (3) provisions which require instruments to secure the positive approval of Parliament if they are to become or, in some cases, remain effective (known as the 'affirmative procedure')<sup>4</sup>.

Provisional order procedure, which involves the confirmation of instruments by Act before they become effective, has been almost completely superseded by special parliamentary procedure, which constitutes a wholly distinct code governing the instruments to which it applies from their preliminary stages to their being brought into operation in accordance with its provisions. Both of these procedures are considered elsewhere in this work<sup>5</sup>.

1 For the most recent general examination of the procedures commonly employed and proposals to rationalise them see the second Report of the Joint Committee on Delegated Legislation (HL Paper (1972-73) no 204; HC Paper (1972-73) no 468).

2 See PARA 1515 post.

3 See PARAS 1516-1517 post.

4 See PARA 1518 post. Exceptionally, the European Communities Act 1972 s 2 (as amended), Sch 2 para 2(2) enables the government to choose to employ either the negative or the affirmative procedure for Orders in Council and regulations under that Act.

5 See PARLIAMENT vol 34 (Reissue) PARA 913 (provisional order procedure) PARAS 912-927 (special parliamentary procedure).

## **UPDATE**

### **1499-1526 Subordinate Legislation**

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(2) PARLIAMENTARY CONTROL/1515. Instruments subject only to laying before Parliament.

### **1515. Instruments subject only to laying before Parliament.**

Many Acts conferring legislative powers provide that instruments made in exercise of them are to be laid before Parliament, or, sometimes, the House of Commons alone, after being made, but do not subject them to any further procedure<sup>1</sup>.

Before 1948, the effect of such a provision was in every case a matter of construction. It might be provided that an instrument was not to come into operation until the expiry of a specified period after laying; but no more was normally required than that it be laid, or laid forthwith or as soon as may be, or laid within a specified period, and in these cases, unless the contrary intention clearly appeared, the provision would be held directory rather than mandatory<sup>2</sup>, failure to lay the instrument at all, or within the time specified, in no way affecting its validity<sup>3</sup>.

However, since the beginning of 1948, the effect of provisions for laying so far as statutory instruments are concerned has been governed by the Statutory Instruments Act 1946<sup>4</sup>. Where any such instrument, other than one containing an order subject to special parliamentary procedure<sup>5</sup>, is required by that Act or any Act passed after 1947 to be laid before Parliament or the House of Commons after being made<sup>6</sup>, but is not required to be laid for a specified period before coming into operation<sup>7</sup>, a copy of it must be laid before each House (or, as the case may be, the House of Commons) before it comes into operation<sup>8</sup> unless it is essential that it should commence before copies can be so laid<sup>9</sup>. If any Act passed before 1948 contains provisions imposing a similar requirement with respect to instruments made under a power conferred by that Act or any other, then, unless it contains an order subject to special parliamentary procedure or is required to be laid for a specified period before coming into operation, any statutory instrument made under that power is subject to the provisions previously set out as to the laying of copies, in substitution for provisions in the Act in question<sup>10</sup>.

If a statutory instrument which is subject to the above requirements as to laying before Parliament is in fact brought into operation before the laying of copies, the Lord Chancellor and the Speaker of the House of Commons must be notified forthwith, and furnished with an explanation<sup>11</sup>, and every instrument to which those requirements apply, and which is sold by the Queen's Printer<sup>12</sup>, must bear on its face a statement showing the date on which it came or will come into operation<sup>13</sup>, and either a statement showing the date on which copies were laid before Parliament or the House of Commons or a statement that copies are to be so laid<sup>14</sup>.

1 Unless the contrary intention appears, (1) a reference in any Act of Parliament or subordinate legislation, whenever passed or made, to the laying of any instrument or other document before either House of Parliament is to be construed as a reference to the taking during the existence of a Parliament of such action as is directed by virtue of any standing order, sessional order or other direction of that House for the time being in force to constitute the laying of that document before that House, or as is accepted by virtue of the practice of that House for the time being as constituting such laying, notwithstanding that the action so directed or accepted consists in part or wholly in action capable of being taken otherwise than at or during the time of a sitting of

that House; and (2) a reference in any such Act or subordinate legislation to the laying of any instrument or other document before Parliament is to be construed as a reference (construed in accordance with head (1) supra) to the laying of the document before each House of Parliament: see the Laying of Documents before Parliament (Interpretation) Act 1948 s 1(1). See also note 10 infra. As to the methods of laying see PARLIAMENT vol 34 (Reissue) PARA 941.

2 As to the distinction between mandatory and directory provisions see PARA 1238 ante.

3 See *Bailey v Williamson* (1873) LR 8 QB 118 at 132; *Starey v Graham* [1899] 1 QB 406 at 412. Cf *Metcalfe v Cox* [1895] AC 328, HL. See also the National Fire Service Regulations (Indemnity) Act 1944 (repealed) (which was passed to indemnify the Secretary of State against all consequences of his failure to lay (in some cases, as much as two years after their making) 23 sets of regulations required to be laid as soon as possible, and to deem the regulations to have been duly laid); the Town and Country Planning Regulations (London) (Indemnity) Act 1971 (repealed) (which declared that instruments not laid should be deemed to have been laid).

4 See PARA 1501 ante.

5 As to special parliamentary procedure see PARA 1514 ante.

6 As to provisions for the laying of instruments in draft see PARA 1517 post.

7 Laying of such instruments is governed not by the Statutory Instruments Act 1946 but by the provisions under which they are made, taken with the Laying of Documents before Parliament (Interpretation) Act 1948 s 1(1), and the relevant standing orders of each House: see further PARLIAMENT vol 34 (Reissue) PARA 941.

8 Statutory Instruments Act 1946 ss 4(1), 7(2), (3). See also note 10 infra.

9 Ibid s 4(1) proviso. See also the text and note 11 infra.

10 Ibid ss 4(3), 7(2), (3). References in s 4 to the laying of copies of instruments are to be construed in accordance with the Laying of Documents before Parliament (Interpretation) Act 1948 s 1(1): s 1(2).

11 See the Statutory Instruments Act 1946 s 4(1) proviso. If notification forthwith is impossible by reason of a vacancy in either office (whether arising by death, resignation, dissolution of Parliament or otherwise), this requirement is to be treated as complied with if the notification is sent immediately after the vacancy is filled: Laying of Documents before Parliament (Interpretation) Act 1948 s 2. As to the laying of the notification on the table of each House see PARLIAMENT vol 34 (Reissue) PARA 942.

12 As to the printing and sale of instruments see PARA 1506 ante.

13 Statutory Instruments Act 1946 s 4(2)(a).

14 Ibid ss 4(2)(b), 7(2).

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

### 1515 Instruments subject only to laying before Parliament

NOTE 1--As to laying documents before the National Assembly for Wales, see the 1948 Act s 1(1A) (added by the Government of Wales Act 2006 Sch 10 para 4).

TEXT AND NOTE 11--For 'to the Lord Chancellor ... House of Commons' now read 'to the Speaker of the House of Commons and the Speaker of the House of Lords': 1946 Act s 4(1) (amended by the Constitutional Reform Act 2005 Sch 6 para 4(2)).

NOTE 11--1948 Act s 2 amended: 2005 Act Sch 6 para 5(2).

TEXT AND NOTE 12--For 'sold by' read 'sold by or under the authority of': 1946 Act s 8(1) (c); Statutory Instruments (Production and Sale) Act 1996 s 1.

NOTES 13, 14--1946 Act s 4(2) amended: 1996 Act s 1.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(2) PARLIAMENTARY CONTROL/1516. Instruments subject to negative procedure after making.

### **1516. Instruments subject to negative procedure after making.**

Enabling Acts passed before 1948<sup>1</sup> frequently provided not only that instruments made under them should be laid before Parliament (or in some cases the House of Commons alone) after being made, but also that any such instrument should be annulled or, in the case of an Order in Council, should cease to have effect, if, within a specified period after laying, either House (or, as the case might be, the House of Commons) so resolved or, in the case of an Order in Council, presented an address to that effect to Her Majesty.

So far as statutory instruments are concerned<sup>2</sup>, provisions of this nature have now been standardised both as respects their effect and, in the case of Acts passed after 1947, as respects their form also. Acts passed after 1947 need provide only that statutory instruments made under any particular power are to be subject to annulment in pursuance of a resolution of either House of Parliament or, if it is so desired, of the House of Commons alone. The effect of such a provision is to require the instruments in question to be laid before Parliament or, as the case may be, the House of Commons after being made<sup>3</sup>, and if a House before which a copy of an instrument is laid in pursuance of any such requirement resolves within the period of 40 days beginning with the day on which it is laid<sup>4</sup> that an address be presented to Her Majesty praying that the instrument be annulled, no further proceedings may be taken under the instrument and it may be revoked by Order in Council<sup>5</sup>. The same result is achieved with respect to Acts passed before 1948, if they contain provisions requiring any instrument to be laid before Parliament or before the House of Commons after being made, and subjecting it to a procedure by which it may be rendered inoperative by reason of a resolution or address<sup>6</sup>.

1     Ie before the commencement of the Statutory Instruments Act 1946: see PARA 1501 ante.

2     This does not include instruments containing orders subject to special parliamentary procedure (see PARA 1514 ante) and instruments required to be laid before Parliament or the House of Commons for a specified period before coming into operation, as they are excluded from these provisions by *ibid* s 7(3): see PARA 1515 ante. For an unusual example see the Industry Act 1975 s 32(14)-(18) (repealed), which required the order to be laid for 28 days before coming into operation, during which time either House of Parliament could resolve that it be annulled.

3     As to the effects of such a requirement see PARA 1515 ante.

4     No account is to be taken of any time during which Parliament is dissolved or prorogued, or during which both Houses are adjourned for more than four days: Statutory Instruments Act 1946 s 7(1).

5     See *ibid* ss 5(1), 7(2), which apply equally to provisions for annulment contained in the Statutory Instruments Act 1946 itself: see s 5(1). Revocation does not prejudice anything previously done under the

instrument, or the making of a new instrument: s 5(1) proviso. As to motions for annulling an instrument see PARLIAMENT vol 34 (Reissue) PARA 945.

6 See *ibid* ss 5(2), 7(2). The classes of instruments mentioned in note 2 *supra* are excluded from the operation of the Statutory Instruments Act 1946 s 5(2): s 7(3). Section 5 is applied to any regulations made by the Attorney General for Northern Ireland under the War Crimes Act 1991 s 1(4), Sch 2 para 10: see Sch 2 para 10(2).

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(2) PARLIAMENTARY CONTROL/1517. Instruments subject to negative procedure whilst in draft.

#### **1517. Instruments subject to negative procedure whilst in draft.**

An alternative form of negative procedure involves the laying of instruments in draft, the customary provision in Acts passed before 1948 being to the effect that no instrument should be made or, in the case of an Order in Council, submitted to Her Majesty, until the expiration of a specified period after drafts of it had been laid before both Houses of Parliament, or sometimes the House of Commons alone, and that its making or submission should not be proceeded with at all if within that period a resolution or, as the case may be, address to that effect was passed or presented to Her Majesty by a House before whom the draft had been laid.

So far as statutory instruments are concerned, the effect of provisions of this nature and, where Acts are passed after 1947, the form of the provisions, have been standardised. Where an Act passed after 1947 provides that a draft of any statutory instrument is to be laid before Parliament, or the House of Commons alone, and does not go on to prohibit the making of the instrument without the approval of Parliament, or that House, a period of 40 days<sup>1</sup> beginning with the day on which a copy of the draft is laid as required<sup>2</sup> must elapse before the instrument is made (or, in the case of an Order in Council, before the draft is submitted to Her Majesty), and without prejudice to the laying of a new draft, no further proceedings may be taken on the draft if within that period either House (or, as the case may be, the House of Commons) resolves that the instrument be not made or that the draft be not submitted<sup>3</sup>.

The same result is achieved in the case of Acts passed before 1948 if they contain provisions requiring any instrument to be laid in draft before Parliament or the House of Commons, and authorising the prohibition of the making or submission of the instrument by means of a resolution or address<sup>4</sup>.

<sup>1</sup> No account is to be taken of any time during which Parliament is dissolved or prorogued, or during which both Houses are adjourned for more than four days: Statutory Instruments Act 1946 s 7(1).

2 If the draft is to be laid before both Houses, and the copies are laid on different days, the period begins on the later of those days: *ibid* s 6(1).

3 See *ibid* ss 6(1), 7(2), which apply equally to provisions for laying in draft contained in the Statutory Instruments Act 1946 itself: see s 6(1). Cf the Trustee Savings Banks Act 1981 s 49(4) (repealed) (warrants to be laid in draft for at least 40 days before being made, but the Statutory Instruments Act 1946 s 6(1) expressly excluded); the Charities Act 1993 s 17(3) (Statutory Instruments Act 1946 s 6 excluded in certain cases only). As to motions for annulment see *PARLIAMENT* vol 34 (Reissue) PARA 945.

4 See *ibid* ss 6(2), 7(2).

## **UPDATE**

### **1499-1526 Subordinate Legislation**

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see *CONSTITUTIONAL LAW AND HUMAN RIGHTS* vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see *CONSTITUTIONAL LAW AND HUMAN RIGHTS* vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(2) PARLIAMENTARY CONTROL/1518. Instruments subject to affirmative procedures.

#### **1518. Instruments subject to affirmative procedures.**

The affirmative procedure most frequently adopted is that by which an instrument is required to be laid before Parliament (or the House of Commons) in draft, and is not to be made unless approved by resolution<sup>1</sup>. More rarely, it is provided not that the making of an instrument is to be postponed until approval has been obtained, but that the instrument is to be laid before Parliament, or the House of Commons, after making, and is to cease to have effect unless approved within a specified period<sup>2</sup> after making<sup>3</sup>.

1 A variant of this procedure by which an instrument is required to be laid after making, and cannot come into force until approved by resolution, is now little used.

2 The period is usually 28 days. Cf the Emergency Powers Act 1920 s 2(2) (regulations to expire after seven days unless approved); and the Prevention of Terrorism (Temporary Provisions) Act 1989 ss 1, 27 (as amended) (orders to be approved in draft or, if urgent, approved within 40 days after making).

3 As to the effect of such a provision so far as it requires the instrument to be laid see PARA 1515 ante. As to the types of cases in which the use of affirmative procedures may be considered appropriate see the Second Report of the Joint Committee on Delegated Legislation (HL Paper (1972-73) no 204, HC Paper (1972-73) no 468) PARA 46. As to affirmative procedure see also *PARLIAMENT* vol 34 (Reissue) PARA 944.

## **UPDATE**

### **1499-1526 Subordinate Legislation**

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see *CONSTITUTIONAL LAW AND HUMAN RIGHTS* vol 8(2) (Reissue)

PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

### **1518 Instruments subject to affirmative procedures**

NOTE 2--Emergency Powers Act 1920 replaced by Civil Contingencies Act 2004 Pt 2 (ss 19-31): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 822A. 1989 Act ss 1, 27 replaced by Terrorism Act 2000 ss 3, 123.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(2) PARLIAMENTARY CONTROL/1519. Parliamentary committees.

### **1519. Parliamentary committees.**

Statutory instruments are scrutinised by a number of parliamentary committees<sup>1</sup>. The Joint Committee on Statutory Instruments is a committee of both Houses and is concerned with specified classes of instruments laid before each House upon which proceedings may be, or might have been, taken in either House pursuant to statute<sup>2</sup>, together with other general instruments<sup>3</sup> which are not required to be laid before or subject to proceedings in the House of Commons only<sup>4</sup>. The question for the committee in each case is whether the special attention of Parliament should be drawn to the instrument on the grounds<sup>5</sup> that:

- (1) it imposes, or fixes the amount of, a charge on the public revenues, or contains any other financial provisions of a specified class<sup>6</sup>;
- (2) it is made in pursuance of an enactment containing specific provisions excluding it from challenge in the courts, either at all times or after the expiration of a specified period;
- (3) it gives rise to doubts whether it is intra vires, or appears to make some unusual or unexpected use of the powers conferred by the Act under which it is made;
- (4) it purports to have retrospective effect where the parent Act confers no express authority so to provide<sup>7</sup>;
- (5) there appears to have been unjustifiable delay in its publication or laying before Parliament or, in the case of an instrument which has come into operation before being laid, in notifying the Lord Chancellor and the Speaker of the House of that fact<sup>8</sup>;
- (6) for any special reason its form or purport calls for elucidation; or
- (7) its drafting appears to be defective,

or on any other ground which does not impinge on its merits or on the policy behind it.

The House of Commons Select Committee on Statutory Instruments exercises corresponding functions in relation to statutory and certain other instruments which are directed by statute to be laid before or subject to proceedings in the House of Commons only<sup>9</sup>.

Following the enactment of the Deregulation and Contracting Out Act 1994 and based on a report from the Select Committee on Procedure<sup>10</sup>, the House of Commons made a standing order<sup>11</sup> which constituted the Deregulation Select Committee. The task of the committee is to examine every document containing proposals laid before the House<sup>12</sup> and every draft order



proposed to be made<sup>13</sup>. In scrutinising such proposals, the committee may conclude that a draft order in the same terms should be laid before the House, that the proposals should be amended before an order is laid, or that the order-making power should not be used in respect of the proposals. When draft orders are laid, the committee reports its recommendation whether or not they should be approved. In the case of proposals, the committee is directed to consider whether they:

- (a) appear to make an inappropriate use of delegated legislation;
- (b) remove or reduce a burden or the authorisation or requirement of a burden;
- (c) continue any necessary protection;
- (d) have been the subject of and take appropriate account of adequate consultation;
- (e) impose a charge on the public revenues, or contain provisions requiring certain payments to be made to government, local government or public authorities, or prescribing the amount of such charges or payments;
- (f) purport to have retrospective effect, give rise to doubts whether they are *intra vires*, require elucidation or appear to be defectively drafted; or
- (g) appear to be incompatible with any obligation arising from membership of the European Community.

In consideration of draft orders, the committee is to consider these matters and also the extent to which the minister concerned has had regard to any resolution or report of the committee or other representations<sup>14</sup>.

1 See PARLIAMENT vol 34 (Reissue) PARA 946.

2 The terms of reference of the committee are given by the House of Lords at the beginning of each Parliament, and are set out in HC Standing Orders: see HC Standing Orders (1994) (Public Business) no 124. They relate to every statutory instrument, every scheme, or amendment of a scheme, requiring approval by statutory instrument, and every draft of such an instrument, scheme or amendment, other instruments subject to affirmative procedure and orders subject to special parliamentary procedure, but excluding Orders in Council or draft Orders in Council under the Northern Ireland Act 1974 s 1(3), Sch 1 (as amended) and also draft orders proposed to be made under the Deregulation and Contracting Out Act 1994 s 1: see the text and notes 10-14 *infra*. As to orders subject to special parliamentary procedure see PARLIAMENT vol 34 (Reissue) PARAS 912-927.

3 However, this excludes General Synod measures and instruments made under them. As to General Synod measures see PARA 1205 *ante*.

4 As to such instruments see the text and notes 5-8 *infra*.

5 The grounds here stated are those specified in the terms of reference of the Joint Committee annually given by the House of Lords: see note 2 *supra*.

6 *Ie* provisions requiring payments to be made to the Exchequer, to any government department or to any local or public authority, in consideration of any licence or consent or of any services to be rendered, and provisions fixing the amount of any such payments.

7 As to retrospective effect in relation to subordinate legislation see PARA 1524 *post*.

8 As to the duty to notify the Lord Chancellor and the Speaker where any instrument required to be laid comes into operation before laying see PARA 1515 *ante*.

9 This is done in the case of orders increasing financial limits: see eg the Crown Agents Act 1979 s 19(1), (4). As to the functions of the Select Committee see HC Standing Orders (1994) (Public Business) no 123(10).

10 Fourth Report from the Select Committee on Procedure (HC Paper (1993-94) no 238).

11 HC Standing Orders (1994) (Public Business) no 124A.

12 *Ie* under the Deregulation and Contracting Out Act 1994 s 3.

13 le under *ibid* s 1.

14 HC Standing Orders (1994) (Public Business) no 124A.

## **UPDATE**

### **1499-1526 Subordinate Legislation**

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

### **1519 Parliamentary committees**

NOTE 2--Northern Ireland Act 1974 repealed: Northern Ireland Act 1998 s 100(2), Sch 15.

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(3) JUDICIAL CONTROL/1520. General liability of subordinate legislation to challenge in the courts.

## **(3) JUDICIAL CONTROL**

### **1520. General liability of subordinate legislation to challenge in the courts.**

The validity of legislation made in the exercise of powers conferred by or under a statute can normally be challenged in the courts, whereas statutes are immune from such challenge<sup>1</sup>.

<sup>1</sup> See *Institute of Patent Agents v Lockwood*[1894] AC 347 at 360-361, HL, per Lord Herschell. A challenge would normally be by judicial review: see PARA 1348 ante. As to the inability of the courts to challenge the validity of statutes see PARAS 1200-1201 ante. As to provisions purporting to exclude the right of the courts to inquire into the validity of subordinate legislation see PARA 1349 ante. See further PARA 1521 post.

## **UPDATE**

### **1499-1526 Subordinate Legislation**

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(3) JUDICIAL CONTROL/1521. Grounds for challenging subordinate legislation.

### **1521. Grounds for challenging subordinate legislation.**

There are a number of grounds on which the validity of subordinate legislation may be challenged.

In the first place, it may be alleged that the power under which the legislation purports to have been made was not at the time operative (because, for example, it was expressed to be exercisable in circumstances not then obtaining, or during a period which had by then expired), or that it was not available to the particular person by whom the legislation was made<sup>1</sup>.

Secondly, the exercise of the power may have been formally defective. The question then arises whether the provision which was not observed was mandatory in character, or merely directory, for only if it were mandatory would the validity of the legislation be affected<sup>2</sup>.

Thirdly, the legislation may be defective in substance, its provisions being ultra vires the enabling power or, in the case of sub-delegated legislation, either ultra vires that power or not authorised by it because the provision by which the power is conferred is, in that respect, ultra vires the enabling power on which it in turn depends<sup>3</sup>. The question whether or not a particular provision is ultra vires depends in every case on the true construction of the enabling power concerned<sup>4</sup>. An enabling power will not readily be construed as authorising the repeal or modification of enactments, or the granting of powers of repeal or modification, so that, for example, subordinate legislation is prima facie ultra vires if it is inconsistent with the substantive provisions of the Act by which the enabling power is conferred<sup>5</sup>, or of any other Act<sup>6</sup>, and equally, of course, if it purports to affect existing Acts expressly<sup>7</sup>. Subordinate legislation having retrospective effect may be held valid notwithstanding that it is not authorised in terms by the enabling provision<sup>8</sup>. It may be assumed that an Act will confer express authority where it is intended that legislative powers should be delegated to persons or bodies other than the donee of the original power<sup>9</sup>.

1 Certain provisions of the Interpretation Act 1978 which apply to statutory powers generally are of importance in the present connection. They are those relating to the exercise of powers between the passing and the commencement of the enabling statute (see s 13; and PARA 1280 ante), to the repeated exercise of powers (see s 12(1); and PARA 1343 ante), and to the availability of powers conferred on an office-holder as such to the holder of that office for the time being (see s 12(2); and PARA 1339 ante). See also *Wiseman v Canterbury Bye-Products Co Ltd* [1983] 2 AC 685, PC (whether rules made by delegate survived expiry of delegation deed).

2 As to the distinction between mandatory and directory enactments see PARA 1238 ante. See also *Jones v Robson* [1901] 1 KB 673, where a ministerial order was held not to be invalidated by failure to comply with a provision requiring the giving of notice of it; *R v Sheer Metalcraft Ltd* [1954] 1 QB 586, [1954] 1 All ER 542, where a statutory instrument was held to be valid notwithstanding failure to comply with the requirements as to printing and sale of copies (see PARA 1506 ante); and the authorities cited in PARA 1515 note 3 ante with respect to the breach of provisions requiring the laying of documents before Parliament. See also *R v Secretary of State for Social Services, ex p Camden London Borough Council* [1987] 2 All ER 560, [1987] 1 WLR 819, CA.

3 As to the doctrine of ultra vires see PARA 1341 ante. See also ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 20-33; LOCAL GOVERNMENT vol 69 (2009) PARAS 560-566. Where an order requires confirmation by a minister, the ground of ultra vires may arise after the making of the order: see *London and Westcliff Properties Ltd v Minister of Housing and Local Government* [1961] 1 All ER 610, [1961] 1 WLR 519.

4 See eg *A-G v Brown* [1920] 1 KB 773, where power to prohibit the importation of 'arms, ammunition, gunpowder or other goods' was construed in the light of the ejusdem generis rule (see PARA 1491 ante) and held not to authorise a provision prohibiting the importation of pyrogallic acid. Where the enabling power authorises the making of provision for securing one or more purposes described in general terms, a provision which could not possibly advance any of those purposes will be ultra vires: *Hudson's Bay Co v MacLay* (1920) 36 TLR 469 at 475 per Greer J. On the other hand, a provision will not necessarily be intra vires merely because it is apt to advance the purposes in question: see eg *Chester v Bateson* [1920] 1 KB 829, where power to make regulations for public safety and defence of the realm was held not to authorise a provision preventing proceedings for the

recovery of dwellings occupied by munition workers; *Newcastle Breweries v R* [1920] 1 KB 854, where the same power was held not to authorise a provision enabling food to be requisitioned on payment of compensation below market value; cf *R v Halliday* [1917] AC 260, HL; *Lipton Ltd v Ford* [1917] 2 KB 647; *Ernest v Metropolitan Police Comr* (1919) 89 LJB 42; *Hudson's Bay Co v MacLay* (1920) 36 TLR 469. See also *Customs and Excise Comrs v Cure and Deeley Ltd* [1962] 1 QB 340, [1961] 3 All ER 641; *Vincenzini v Regional Comr of Income Tax* [1963] AC 459, PC; *Re Grosvenor Hotel, London (No 2)* [1965] Ch 1210, [1964] 3 All ER 354, CA; *Ward v James* [1966] 1 QB 273, [1965] 1 All ER 563, CA; *Utah Construction and Engineering Pty Ltd v Pataky* [1966] AC 629, [1965] 3 All ER 650, PC; *Turner v Midgley* [1967] 3 All ER 601, [1967] 1 WLR 1247, DC; *Rodriguez v Parker* [1967] 1 QB 116, [1966] 2 All ER 349; *Parry-Jones v Law Society* [1969] 1 Ch 1, [1968] 1 All ER 177, CA; *Hotel and Catering Industry Training Board v Automobile Pty Ltd* [1969] 2 All ER 582, [1969] 1 WLR 697, HL; *Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223, [1970] 1 All ER 1009, CA; *McEldowney v Forde* [1971] AC 632, [1969] 2 All ER 1039, HL; *Daymond v South West Water Authority* [1976] AC 609, [1976] 1 All ER 39, HL. See also the authorities cited in LOCAL GOVERNMENT vol 69 (2009) PARA 561.

5 See *Re Davis, ex p Davis* (1872) 7 Ch App 526 at 529 per James LJ; *R v Bird, ex p Needes* [1898] 2 QB 340; *Mackey v James Henry Monks (Preston) Ltd* [1918] AC 59, HL; *Re Solicitors Act 1932, Re Two Solicitors* [1938] 1 KB 616, [1937] 4 All ER 451, CA; *Price v West London Investment Building Society* [1964] 2 All ER 318 at 322, [1964] 1 WLR 616 at 622, CA.

6 See *Hacking v Lee* (1860) 2 E & E 906 at 911 per Crompton J; *Irving v Askew* (1870) LR 5 QB 208 at 211 per Hannen J.

7 As to the repeal of Acts by subordinate legislation see further PARA 1305 ante. For an example of such repeal see the Repeal of Offensive Trades or Businesses Provisions Order 1995, SI 1995/2054, repealing the Public Health Act 1936 ss 107, 108 with effect from 1 September 1995.

8 See the authorities cited in PARA 1524 note 4 post. See also the terms of reference of the Joint Committee on Statutory Instruments; and PARA 1519 ante.

9 See ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 31; and the First Special Report of the Joint Committee on Statutory Instruments (HL Paper (1977-78) no 51, HC Paper (1977-78) no 169) PARA 12. For an example of a power to confer legislative powers being granted in terms see PARA 1504 note 4 ante. Despite the absence of any such provision in the Defence of the Realm (Consolidation) Act 1914 (repealed), many powers of legislation were conferred on government departments by Orders in Council under that Act, and the validity of such sub-delegation was apparently never raised.

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P); see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

### 1521 Grounds for challenging subordinate legislation

NOTES 3-7--Subordinate legislation which purports to give powers which substantially interfere with a fundamental right is ultra vires, unless the interference is expressly authorised by the empowering Act or arises by necessary implication from the Act and is reasonable; a rule is unreasonable if it is wider than necessary or infringes the right to a greater degree than is required: *Duncan v Bedfordshire CC* [1997] ELR 299. See also *R v Immigration Appeal Tribunal, ex p Saleem* [2000] 4 All ER 814, CA.

## (4) INTERPRETATION AND OPERATION

### 1522. Interpretation.

The overriding principle in the interpretation of legislation made under powers conferred by statute is that it should be construed in the light of the enabling Act generally<sup>1</sup>, and, in particular, so as to be consistent with its substantive provisions<sup>2</sup>, at any rate where it is not authorised to repeal or amend them, and otherwise in conformity with the terms of the enabling power<sup>3</sup>.

Unless the contrary intention appears, expressions used in subordinate legislation<sup>4</sup> made since 1889 under a power contained in any Act, whenever passed, if used in the Act also, have the same meanings in the instrument as in the Act<sup>5</sup>. Subject to this principle, subordinate legislation is to be construed in accordance with the same general criteria as those which govern the interpretation of Acts<sup>6</sup>. Most of the provisions of the Interpretation Act 1978 apply to subordinate legislation made on or after 1 January 1979<sup>7</sup>.

1 This is known as the rule of primary intention: see Bennion, *Statutory Interpretation* (2nd Edn, 1992) s 59. The rule is laid down in authorities such as *Rickards v A-G of Jamaica* (1848) 6 Moo PCC 381 at 398; *MacFisheries (Wholesale and Retail) Ltd v Coventry Corp*[1957] 3 All ER 299, [1957] 1 WLR 1066, DC; *Hargreaves v Alderson*[1964] 2 QB 159, [1962] 3 All ER 1019, DC; *Allford v Allford*[1965] P 117, [1964] 3 All ER 220; *Utah Construction and Engineering Pty Ltd v Pataky*[1966] AC 629, [1965] 3 All ER 650, PC; *South West Water Authority v Rumble's*[1985] AC 609, [1985] 1 All ER 513, HL.

2 *Re Davis, ex p Davis*(1872) 7 Ch App 526 at 529.

3 Ie the courts will not be astute to ascribe to the person by whom the legislation was framed an intention to make ultra vires provision.

4 For the meaning of 'subordinate legislation' see PARA 1232 note 2 ante.

5 Interpretation Act 1978 ss 11, 22(1), Sch 2 para 1, giving effect to a rule laid down with respect to byelaws in *Blashill v Chambers*(1884) 14 QBD 479 at 485, 490. See also *Potts (or Riddell) v Reid*[1943] AC 1 at 27, [1942] 2 All ER 161 at 174, HL, per Lord Porter; *Re C (Minor) (Adoption: Parties)*(1995) Times, 1 June, CA.

6 See PARA 1375 ante. See also *Gebruder Naf v Ploton*(1890) 25 QBD 13 at 15, CA, per Lord Esher MR (words prima facie to be construed according to their ordinary meaning: see PARA 1487 ante); *Newcastle Breweries Ltd v R*[1920] 1 KB 854 (deprivation of property: see PARA 1468 ante). The explanatory notes which are now customarily added to statutory instruments are expressed to form no part of them, but will be taken into account by the court. Instruments made under a statutory power may provide for their construction as one with earlier instruments made under it. As to the effect of similar provisions in Acts see PARA 1485 ante.

7 See the Interpretation Act 1978 s 23(1), which is expressed to apply to all the provisions of the Act except ss 1-3, 4(b) (see PARAS 1258-1259, 1289, 1208, 1279 respectively ante), unless the contrary intention appears. Section 23(1) does not, however, apply to Orders in Council made under the Statutory Instruments Act 1946 s 5 (see PARA 1516 ante) or under the Northern Ireland Act 1974 s 1(3), Sch 1 (as amended): Interpretation Act 1978 s 23(2). Sections 4(a), 9, 19(1), and so much of Sch 1 (as amended) as defines 'England', 'local land charges register', 'appropriate local land charges register', 'United Kingdom' and 'Wales', apply to subordinate legislation made at any time before the commencement of the Act as they apply to Acts passed at that time: s 23(1), Sch 2 para 6 (amended by the British Nationality Act 1981 s 52(8), Sch 9). The definition in the Interpretation Act 1978 s 5, Sch 1 of 'county court', in relation to England and Wales, applies to Orders in Council made after 1846: Sch 2 para 7. See also *DPP v Lamb*[1941] 2 KB 89 at 101, [1941] 2 All ER 499 at 506, DC, per Humphreys J; *Potts (or Riddell) v Reid*[1943] AC 1 at 8, [1942] 2 All ER 161 at 164, HL, per Lord Thankerton, and at 22 and 171 per Lord Wright. Subordinate legislation made before 1979 frequently applied the Interpretation Act 1889 (repealed) to itself in an express provision: see eg the Electricity (Compulsory Wayleaves) (Hearings Procedure) Rules 1967, SI 1967/450, r 3(2).

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

## **1522 Interpretation**

NOTES--See *R (on the application of the Confederation of Passenger Transport UK) v Humber Bridge Board*[2003] EWCA Civ 1842, [2004] 2 WLR 98 (from examination of extraneous materials, overall substance of orders was clear and unambiguous and therefore omitted words could reasonably be included).

NOTE 3--As to the circumstances in which general enabling words in the preamble to a statutory instrument might be interpreted as referring to an enabling power not expressly invoked see *Polestar Jowetts v Komori UK Ltd; Vibixa v Komori UK Ltd*[2006] EWCA Civ 536, [2006] 4 All ER 294.

TEXT AND NOTE 7--Most of the provisions of the 1978 Act also apply to a Measure or Act of the National Assembly for Wales and to an instrument made under such a Measure or Act: see s 23B (added by the Government of Wales Act 2006 Sch 10 para 11).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/ (4) INTERPRETATION AND OPERATION/1523. Commencement.

## **1523. Commencement.**

Where any subordinate legislation<sup>1</sup> is expressed to come into force on a particular day, it comes into force at the beginning of that day<sup>2</sup>. On the other hand, where an instrument made under delegated powers contains no provision as to commencement, it has been held that it will come into force only when it is made public<sup>3</sup> and not, by analogy with Acts having no express commencement date, at the beginning of the day on which it is made<sup>4</sup>.

1 For the meaning of 'subordinate legislation' see PARA 1232 note 2 ante.

2 Interpretation Act 1978 ss 4(a), 23(1), Sch 2 para 6.

3 *Johnson v Sargant & Sons* [1918] 1 KB 101.

4 See PARA 1279 ante. It is in practice essential that all statutory instruments required to be laid before Parliament should contain express commencement provisions, it being the rule that they must be laid before coming into operation, and the Queen's Printer being under a duty to secure that every such statutory instrument sold by him bears on its face a statement as to its commencement date: see PARA 1515 ante. As to the defence of non-publication available to persons charged with the contravention of statutory instruments see PARA 1511 ante.

## **UPDATE**

## **1499-1526 Subordinate Legislation**

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/ (4) INTERPRETATION AND OPERATION/1524. Other matters affecting operation.

### **1524. Other matters affecting operation.**

Since, if validly made, subordinate legislation has the same force and effect as an Act<sup>1</sup>, little need be added with respect to its operation<sup>2</sup>. However, it may be mentioned that, whereas the question whether it is intended to have retrospective effect is to be answered by the application of principles identical with those by which the question is determined in relation to Acts<sup>3</sup>, the question whether it is capable of having such an effect depends upon the scope of the enabling power<sup>4</sup>. Similarly, questions as to the extent and application of subordinate legislation and the question whether subordinate legislation is intended to bind the Crown must be determined in accordance with the same principles as those applicable to Acts<sup>5</sup> and by reference to the extent or application to the Crown of the provision conferring the power in question<sup>6</sup>.

1 See PARA 1510 ante.

2 As to the operation of Acts see PARA 1322 et seq ante.

3 See *Hubbard v Bromley RDC* (1905) 69 JP 437; *R v Oliver* [1944] KB 68 at 75, [1943] 2 All ER 800 at 803, CCA, per Lord Caldecote CJ. As to retrospective effect in relation to Acts see PARA 1283 et seq ante.

4 See eg *Customs and Excise Comrs v Thorn Electrical Industries Ltd* [1975] 3 All ER 881, [1975] 1 WLR 1661, HL. See also *DPP v Lamb* [1941] 2 KB 89 at 101, [1941] 2 All ER 499 at 506 per Humphreys J, followed in *Buckman v Button* [1943] KB 405, [1943] 2 All ER 82, and approved in *R v Oliver* [1944] KB 68, [1943] 2 All ER 800, CCA, in each of which subordinate legislation increasing penalties for offences committed both before and after its commencement was held valid.

5 As to these principles see PARA 1317 et seq ante.

6 *Gorton Local Board v Prison Comrs* (1887) reported in [1904] 2 KB 165n (application to the Crown); *Air India v Wiggins* [1980] 2 All ER 593, [1980] 1 WLR 815, HL (extent).

## **UPDATE**

### **1499-1526 Subordinate Legislation**

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

### **1524 Other matters affecting operation**

NOTE 4--See *Nicholls v Greenwich LBC* [2003] EWCA Civ 46, [2003] ICR 1020 (legislative cap on pension entitlements not having retrospective effect on contract predating legislation).

Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(5) CESSATION IN FORCE/1525. Lapse on repeal or expiry of enabling provision.

## (5) CESSATION IN FORCE

### 1525. Lapse on repeal or expiry of enabling provision.

Unless it is the subject of an express saving, subordinate legislation ceases to be in force on the repeal of the enactment under which it was made<sup>1</sup>. The only general saving contained in the Interpretation Act 1978 which applies to prevent subordinate legislation lapsing on the repeal of the enabling power is that which applies where the power is repealed and re-enacted with or without modifications<sup>2</sup>. It has been held in relation to an express saving similar to this provision that where words used in the subordinate legislation to define its scope are given a wider meaning for the purposes of the repealing Act, the saving will not have the effect of widening the scope of the subordinate legislation<sup>3</sup>.

Where the enactment under which subordinate legislation is made is limited in duration, the question whether the legislation is to have effect for any further purpose after the enactment has expired depends upon the true construction of the enactment<sup>4</sup>.

1 See PARA 1296 et seq ante. See also *Wiseman v Canterbury Bye-Products Co Ltd* [1983] 2 AC 685, PC (whether rules made by delegate survived expiry of delegation deed).

2 See the Interpretation Act 1978 s 17(2)(b) (cited in PARA 1245 ante), which applies only to repeals made by Acts passed after 1978: see s 26. For a case in which it was said that a similar saving might confirm a provision which would otherwise be of doubtful validity see *Re Fletcher, ex p Fletcher v Official Receiver* [1956] Ch 28, [1955] 2 All ER 592, CA.

3 *Garcia v Harland and Wolff Ltd* [1943] 1 KB 731, [1943] 2 All ER 477 (followed in *Lovell v Blundells and Crompton & Co Ltd* [1944] KB 502, [1944] 2 All ER 53; not following *FitzPatrick v C and K Crichton (1921) Ltd* (14 November 1941, unreported)). See also *Canadian Pacific Steamships Ltd v Bryers* [1958] AC 485, [1957] 3 All ER 572, HL. Cf *Miller's Cash Stores Ltd v West Ham Corp* [1955] 3 All ER 282, [1955] 1 WLR 1121, DC.

4 As to the effect of expiry generally see PARA 1314 ante.

## UPDATE

### 1499-1526 Subordinate Legislation

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).



Halsbury's Laws of England/STATUTES (VOLUME 44(1) (REISSUE))/6. SUBORDINATE LEGISLATION/(5) CESSATION IN FORCE/1526. Revocation and expiry.

### **1526. Revocation and expiry.**

Subordinate legislation may be revoked either by an Act or, where the powers conferred are sufficiently wide, by other legislation made in the exercise of delegated powers, and may in both cases be revoked either expressly or by implication<sup>1</sup>. So far as revocation by other subordinate legislation is concerned, where any Act passed after 1889 confers a power to make any rules, regulations or byelaws, it is to be construed, unless the contrary intention appears, as implying a power, exercisable in the same manner, and subject to the same conditions or limitations, to revoke, amend or re-enact any instrument made under the power<sup>2</sup>. The same extension is made of any power conferred by an Act passed after 1978 to make Orders in Council, orders or other subordinate legislation to be made by statutory instrument<sup>3</sup>.

The effect of revoking subordinate legislation without savings is the same as that of repealing an Act without savings<sup>4</sup>. Where the revocation is effected by subordinate legislation made after 1978, the general savings in the Interpretation Act 1978 apply<sup>5</sup>.

The effect of the expiry of subordinate legislation of a temporary character is governed by principles similar to those which apply on the expiry of a temporary Act<sup>6</sup>. In particular, the saving provisions contained in the Interpretation Act 1978 apply if the subordinate legislation was made after 1978<sup>7</sup>.

1 The principles to be applied for determining whether subordinate legislation has been impliedly revoked, whether by an Act or by other legislation made under delegated powers, are the same as those which apply as between two Acts: see *Gosling v Green* [1893] 1 QB 109 at 112 per Pollock B. As to these principles see PARA 1299 et seq ante.

2 Interpretation Act 1978 ss 14(a), 22(1), Sch 2 para 3. As to the power to revoke by Order in Council any statutory instrument which has been the subject of a resolution for annulment see PARA 1516 ante.

3 Ibid ss 14(b), 26. In the application of s 14 to Acts passed after 1978 which extend to Northern Ireland, 'statutory instrument' includes a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979, SI 1979/1573: Interpretation Act 1978 s 24(3) (amended by the Statutory Rules (Northern Ireland) Order 1979 art 11(1), Sch 4 para 25).

4 See *Boddington v Wisson* [1951] 1 KB 606, [1951] 1 All ER 166, CA. As to the results flowing from a repeal without savings see PARA 1296 ante.

5 Interpretation Act 1978 ss 16, 23(1), 26. As to the position in relation to instruments made before 1979 see *DPP v Lamb* [1941] 2 KB 89 at 101-102, [1941] 2 All ER 499 at 506, DC, per Humphreys J. For consideration of what was necessary in an instrument made before 1979 to apply the savings in the Interpretation Act 1889 (repealed) see *Bennett v Tatton* (1918) 88 LJKB 313.

6 See PARA 1314 ante.

## **UPDATE**

## **UPDATE**

### **1499-1526 Subordinate Legislation**

As to the making of subordinate legislation by the Welsh Ministers, the First Minister and the Counsel General, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42F. References in the Statutory Instruments Act 1946 include references to

Measures and Acts of the National Assembly for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 42H-42P): see s 11A (added by the Government of Wales Act 2006 Sch 10 para 3).

---- End of Request ----

Print Request: Selected Items in Table of Contents: (327)

Time Of Request: Wednesday, June 16, 2010 19:31:19